

# MAGNA CHARTA,

WITH

ITS HISTORY AND DEFENCE,

FROM

THE INVASION OF JULIUS CÆSAR

TO THE PRESENT TIME;

WITH THE

BILL OF RIGHTS, SCOTS CLAIM OF RIGHTS,

HABEAS CORPUS ACT

AND AN

INTRODUCTORY DISCOURSE, WITH AN

ESSAY ON PARLIAMENTS.

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WROTE BY DR. SAMUEL JOHNSTON.

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## TO THE PUBLIC.

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THE general anxiety for the republication of MAGNA CHARTA, will, now we hope, in a great degree cease, the unexpected delay which it has met with is entirely owing to the difficulty of finding printers who knew, or could be persuaded, of the unlimited freedom of the press: The most of them are slaves to fear, intimidated at the thought of corporal punishment; but for engaging in such a work, no law can take hold of them, for it rather sanctions and protects, while people applaud.

The executive power has been exerted to destroy and bury in oblivion this edition; but perhaps we may live to see the happy effects which it will produce. Bribery too has not been asleep, it has been proposed not only to intercept the accomplishment of *our candid promise* to procure for the PEOPLE a fair statement of their undoubted RIGHTS, But, perhaps for a purpose still worse, that *they* should remain ignorant of those Civil Liberties which are taught therein: but it has been evaded; something more permanent than a splendid show of Guineas has actuated our minds. The happiness of a Nation at large, opposed to that of a few individuals, in the scale of Reason and Justice, must in-



initely preponderate ; And every honest mind will have, not his own happiness alone at heart, but, moved by zeal and unshaken fidelity, will pursue measures best calculated to promote the peace and happiness of his countrymen.

THAT the same principles which have been the springs of our action and that the same pure motives which have influenced our minds may actuate every soul within the limites of the BRITISH EMPIRE and teach them to know that they alone are the luminaries which can enlighten the world and its Laws, is the earnest prayer of the

EDITORS

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## INTRODUCTORY DISCOURSE.

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**T**HOUGH it is very difficult to trace the first rudiments of the policy and laws established in England, yet we have the greatest reason to believe, that the natives, even in the earliest ages, were divided into small communities, in which a kind of democracy had the ascendant. Cesar, on his invasion of this island, seems to confirm this opinion in several passages of his commentaries, and expressly tells us, "The chief command and administration of the war was, by the common council, bestowed on *Casivelaun*." In emerging from a state of rudeness and simplicity, men generally act from that spirit of independance to which they have been accustomed. It is probable, therefore, that the old inhabitants had no monarch; but, upon any extraordinary occasion, summoned a national meeting and chose a chief from among those who were the most distinguished for their abilities.

After the Romans had withdrawn their protection, and the Britons were exposed to the insults of the Picts and Scots, they invited over the Anglo-Saxons; who soon after became their tyrants, and formed seven Saxon kingdoms upon the ruins of the conquered country. In consequence of this, the ancient inhabitants were exterminated, or forced to seek an asylum in the inaccessible mountains. Their laws, manners, and language were abolished, and those of the Saxons were established in their stead. To the characters of conquerors these people were ambitious to add that of legislators: and there is very good reason to believe that many of the laws which remain in force even at this day, are the same



which were brought from the northern parts of Germany by the Saxon invaders. Though the title of king was not used amongst them, their chiefs assumed it, soon after their arrival in this island. In Saxony their governors were appointed by an assembly general of the nation, which was called Witennagemot, which, in the Saxon language, signifies the meeting of the wise men, and which regulated all the important affairs of the state. When the Saxon conquests in England were divided into seven kingdoms, the monarchs being under a necessity of retaining great numbers of their own countrymen among their subjects, were cautious of exercising a despotic power, and therefore continued to hold the Witennagemot wherever the common interest of the people was concerned. From hence in some degree we are enabled to determine the nature of their constitution; as each kingdom of the Heptarchy had its sovereign, it was partly *monarchical*; as the king could not make laws without the consent of the principal men of the nation, it was, in some degree, *aristocratical*; and as the people, who held their lands of the nobles, were summoned to the general assembly, we have reason to suppose it was, in some measure, *democratical*. That the crown was *elective* seems probable from the distant branches of the royal family, often succeeding to the throne before those who were the nearest relations of the monarch.

During the dominion of these people, which lasted above six hundred years, the celebrated Alfred formed a code of laws, that will, for ever, do the greatest honour to the memory of that amiable prince. Convinced that oppression naturally follows power; to screen the humble from the tyranny of the great, he instituted *trials by jury*; by which, in all criminal cases it was ordained, that twelve men should decide whether the accused person was guilty of the offence laid to his charge or not, and that the judge should pronounce sentence agreeably to their verdict. These twelve jurymen were chosen from amongst the peers of the delinquent. It is necessary to observe in this place, that in England there are but two degrees or orders of men; viz. the peers of the realm and commoners. All dukes, marquesses, earls, viscounts, and barons are not only peers of the realm, but peers

amongst themselves; so that the most inferior baron is the peer of the greatest duke. The rest of the people are called the commoners, without distinction, by which the poorest labourer is the peer of every one under the degree of a baron. The peers of the realm from this noble privilege, established or revived by King Alfred, are judged by those of their own rank; that is, by the rest of the lords; and the commoners by *their* equals also. The only difference between the lords and commons in this matter, is, that *every* peer has a right to give his voice at the trial of any culprit, of the former denomination; and that twelve men only, are to acquit or condemn any person that is classed amongst the latter.

After various revolutions, the seven kingdoms were reduced to one, the sceptre of the Saxons passed into the hands of the Danes; and returned, in process of time, into the possession of the Saxons again.

During these affairs, the English constitution, from the best accounts, appears to have suffered no little alteration; the nobles, by degrees, usurped an authority which the laws had not entitled them to; they limited the prerogative of the king; and invaded the rights of the people, so that the government in England continually approached towards an Aristocracy. The insolence of Earl Godwin to Edward the Confessor probably occasioned that cautious monarch, who had good reason to suspect that the earl had intentions of aspiring to his crown, to invite over to his court William of Normandy. This visit, furnished that enterprising nobleman some years after with a pretence to inherit the throne; for on Harold's being nominated successor to King Edward, William insisted that he had been promised the crown by the late king, and that Harold himself had taken an oath to assist him in obtaining it; and submitting his cause to the judgment of Pope Alexander II. Harold was declared an usurper by that pontiff.

In consequence of this decision, William invaded England with a powerful army, slew Harold in the memorable battle of Hastings; and, by that act, ended the government of the Saxons in England, two hundred and thirty-seven years after the union of the Heptarchy, and six hundred and seventeen after the landing of Hengist.



William was so far from founding his title to the crown upon a *right of conquest*, that he took every method in his power to establish the opinion of his being *heir* to King Edward, from the particular appointment of that monarch, and when he was crowned, some time afterwards, the *people's consent* was obtained before he ascended the throne; and he even made a *compact* to *insure* the *liberties* of his subjects, by swearing the same coronation oath which had usually been taken by the Saxon monarchs. Though he violated this engagement afterwards, and greatly oppressed and impoverished the people, yet the *constitution*, as an eminent writer observes, was not an absolute monarchy, but an engraftment of the feudal tenures and other Norman customs upon the ancient Saxon laws of Edward the Confessor, which King William not only swore to maintain, but confirmed afterwards in parliament.

Though it must be allowed, that these laws were greatly altered, and produced a considerable change in power and property, yet they were agreed to, by the whole legislature, and the liberty of the subject was, in some respects, preserved; *The freemen*, says one of the statutes enacted in this reign, *shall hold and enjoy their land and possessions, free from all unjust exaction and tallage; and nothing shall be exacted from them, but their free service, which they, by right, owe to the crown.* This, by some learned writers, as it was confirmed to the people by the common council of the kingdom, is called the first Magna Charta of the Normans.

After the death of the conqueror, who bequeathed the crown to his second son William Rufus, the whole nation felt, in the severest manner, what heavy burthens the feudal laws by arbitrary constructions could impose upon the subject; and how the rights of the king and liberties of the people were infringed by the power of the nobility.

It was from the reign of Henry I. that we ought to derive the first regular settlement of the Anglo-Norman constitution; though the commons, till long after this time, were greatly overbalanced in power and property by the clergy and nobles, who, while they interposed between the crown and the people, incroached upon the

rights of the latter so much, that despotism itself could not be more oppressive, and the commonality suffered all the evils of slavery under the appearance of freedom.

The feudal government having degenerated into a system of tyranny in most parts of Europe, and the usurpations of the nobles having become unbounded and intolerable; the cities of Italy became impatient to shake off the yoke of their insolent lords; and about the beginning of the eleventh century, they united together, boldly assumed new privileges, and were roused by such a spirit of independance, that they formed themselves into corporate bodies; and, under pretence of recovering their ancient property, took possession of the castles of the barons, and obliged those haughty lords to swear an oath of fidelity to them, and even become members of their community, and subject their estates to all taxes and fines imposed by the common consent of the people.

This revolution soon made its way into France, where Louis le Gros, in order to take away from the power of the nobility, conferred new privileges upon the inhabitants of that nation, and formed them into corporations, which relieved them from those arbitrary and grievous impositions, to which they had formerly been subjected, and they were governed by known and equal laws.

Even in the feudal system of policy no freeman could be governed or taxed, but by his own consent. It was natural, therefore, for the towns, who formerly depended for protection on the lords of whom they held, as soon as they were enfranchised, to be ambitious of acquiring all the rights essential to independency. In consequence of this, as they gained any degree of credit and influence, they insisted on the privilege of a decisive voice in enacting laws and granting subsidies.

The happy effects of admitting the representatives of cities into the great council of the nation, were soon very apparent. An intermediate power between the king and nobles was established; which, on some occasions, checked the usurpations of the one, and at other times opposed the encroachments of the other. It was not long before these new institutions were introduced into England. Henry I. perceiving that the surest method to obtain the crown and set aside the pretensions of his elder brother



Robert would be to establish himself in the favour of the people, by procuring them such national benefits, as would make his interest that of the public; took every method to alleviate the heavy burthens which had become so insupportable to the lower rank of his subjects; he granted, to give liberty a more solid and lasting foundation, the outlines of that celebrated Charter which is the subject of the following sheets. A Charter in which the Saxon laws in use under Edward the Confessor, were restored to the people, and which annulled all evil customs, illegal exactions and unjust oppressions. The king and his subjects thus united together by this great instrument of mutual obligation; the conduct of that monarch, for some time, entirely agreed with the engagements he had made; he remitted a number of debts that were due to the crown, and redressed several grievances which the people complained of; by mitigating the most oppressive of the feudal laws, and punishing such persons as were enemies to the people, and had made themselves odious by an abuse of their power.

On the accession of King Stephen, he acknowledged his being elected by the *consent* of the people: he granted them a Charter, in which he confirmed all their liberties, privileges, and immunities; and abolished all the laws relating to hunting and the forfeits which had been enacted since the conquest; and when he broke his compact afterwards, he involved himself in troubles that lasted during the greatest part of his reign.

We shall say nothing here of the grant of the Great Charter, which was obtained in the year one thousand two hundred and fifteen, from King John, as that interesting circumstance is fully treated of in the following history. It would exceed the limits we have been obliged to prescribe to ourselves in this introductory essay to particularize the establishment of the parliament under Edward I. and the various changes it underwent, from the fraud of some, and the violence of others, till the reign of that unfortunate monarch, Charles; whose unhappy disputes with his commons in the year 1628, produced that spirited remonstrance, intitled the *Petition of Rights*, which was so called, because the drift of it was, not to desire of the

King any grace or favour, but only the maintenance of the rights of the people.

This celebrated paper was presented by the commons, the second of June, 1628, and was drawn up in the following words :

*" To the King's most excellent Majesty,*

*" Humbly shew unto our sovereign lord the king, the lords spiritual and temporal, and commons in parliament assembled, that, whereas, it is declared and enacted by a statute, made in the time of the reign of King Edward I. commonly called *Statutum de Tallagio non concedendo*, that no tallage or aid should be laid or levied, by the king or his heirs, in this realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the commonalty of this realm : and by authority of parliament holden in the five and twentieth year of the reign of King Edward III. it is declared and enacted, that from henceforth, no person shall be compelled to make any loans to the king against his will, because such loans were against reason, and the franchise of the land ; and by other laws of this realm it is provided, that none shall be charged by any charge or imposition, called a benevolence, nor by such like charge, by which the statutes before-mentioned, and other good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge, not set by common consent in parliament.*

*" Yet nevertheless, of late, divers commissions, directed to sundry commissioners in several counties with instructions, have been issued, by means whereof, your people have been, in divers places, assembled, and required to lend certain sums of money unto your majesty ; and many of them, upon their refusal so to do, have had an oath administered unto them, not warrantable by the laws and statutes of this realm, and have been constrained to become bound to make appearance, and give attendance before your privy-council and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted :*



and divers other charges have been laid and levied upon your people in several counties, by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace, and others, by command or direction from your majesty, or your privy-council, against the laws and free customs of the realm. And where, also, by the statute called, *The Great Charter of the Liberties of England*; it is declared and enacted, That no freeman may be taken or imprisoned, or be disseized of his freehold of liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by lawful judgment of his peers, or by the law of the land.

“ And in the eight and twentieth year of the reign of King Edward III. it was declared and enacted by authority of parliament, That no man, of what estate or condition that he be, should be put out of his lands or tenements, nor taken, nor imprisoned, nor disinherited, nor put to death without being brought to answer by due process of law.

Nevertheless, against the tenor of the said statutes, and other, the good laws and statutes of your realm, to that end provided, divers of your subjects have of late been imprisoned, without any just cause shewed; and when for their deliverance they were brought before your justices, by your majesty's writs of Habeas Corpus, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer; no cause was certified, but that they were detained by your majesty's special command, signified by the lords of your privy council, and yet were returned back to several prisons without being charged with anything to which they might answer according to law.

“ And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people.

“ And whereas also by authority of parliament in the twenty fifth year of the reign of King Edward III. it is declared and enacted, that no man should be forejudged

of life or limb, against the form of the Great Charter, and the laws of the land, and by the said Great Charter, and other the laws and statutes of this your realm, no man ought to be adjudged to death, but by the laws established in this your realm, either by the customs of the same realm or by acts of parliament: and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless of late time, divers commissions under your majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners, with power and authority to proceed within the land, according to the justice of martial law against such soldiers, and mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor, whatsoever; and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

" By pretext whereof some of your majesty's subjects have been by some of the said commissioners put to death; when and where, if by the laws and statutes of the land, they had deserved death, by the same laws and statutes also they might, and by no other ought, to have been judged and executed.

" And also sundry grievous offenders by colour thereof, claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forbore to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial laws and by authority of such commission as aforesaid; which commission and all others of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

" They do therefore humbly pray your most excellent majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that



none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof: and that no freeman in any such manner, as is before mentioned, be imprisoned or detained: and that your majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in the time to come: and that the aforesaid commissions for proceeding by martial law, may be revoked, and annulled; and that hereafter, no commissions of like nature, may issue forth to any person or persons whatsoever, to be executed as aforesaid, lest by colour of them, any of your majesty's subjects be destroyed or put to death, contrary to the laws and franchises of the land.

"All which they most humbly pray of your most excellent majesty, as their rights and liberties, according to the laws and statutes of this realm: and that your majesty would also vouchsafe to declare, that the awards, doings, and proceedings to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example: and that your majesty would be also graciously pleased, for the further comfort and safety of your people; to declare your royal will and pleasure, that in the things aforesaid, all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your majesty and the prosperity of this kingdom."

Though this petition had for its foundation, Magna Charta, six other statutes, and a great number of precedents, yet the king endeavoured to evade the passing of it into a law, and when it was carried, he was so offended with the attempts of his people for an effectual redress of their grievances, that he abruptly dissolved the parliament, and never called another for twelve years afterwards.

In 1640, after the people had made various applications to the monarch, in consequence of the principles of arbitrary power asserted by the court, having bred a general discontent, he summoned a parliament, which passed the celebrated triennial bill, providing that a parliament should be held every third year.

On the debate upon this bill, Lord Digby, observed,

that it had been a maxim among the wisest legislators, that whoever means to settle good laws, must proceed in them, with a sinister opinion of all mankind; and suppose that whoever is not wicked, it is for want only of the opportunity. It is that opportunity of being ill, Mr. Speaker; said he, that we must take away, if ever we mean to be happy, which can never be done, but by the frequency of parliaments. No state can wisely be confident of any public minister's continuing good, longer than the rod is over him. Surely therefore there is no man but will conclude with me, that as the deficiency of parliaments, hath been the *causa causarum* of all the mischiefs and distempers of the present times; so the frequency of them is the sole catholic antidote that can preserve and secure the future from the like.

The unhappy divisions between this prince and his people, it is well known, at last terminated in a civil war, soon after which the king lost his life, the parliament seized upon the whole sovereign authority, and entirely subverted the constitution.

Upon the re-establishment of the government at the restoration, the power of the crown was greatly increased by the servility of the members of the house of commons, till the lords, joining with the king, in an attempt to annex the taking and settling the public accounts to the prerogative, they met with great opposition from the representatives of the people, who though they had submitted to be fleeced in a most unmerciful manner, were not quite so tractable as to give up all their rights, but spiritedly voted the king's guards to be unconstitutional and passed the *Habeas Corpus* bill, which will always make their memory held in estimation by every lover of his country.

About this period, the house was divided in two parties, one of which was distinguished by the name of the *Court*, and the other by the title of the *Country*; the former, says sir William Temple, were grown numerous by a practice introduced about five years before this time, by the lord treasurer Clifford, of downright bying off one man after another, as they could make the bargain. The country party still continued the majority, and retained more credit upon the corruption of the others, and their



profession of adherence to the true interests of the nation, especially in the points of France, and popery. Where these came in question, many of the court party voted with those of the country, who then carried all before them; but whenever the court appeared to fall in with the true interests of the nation, especially in those two points, then many of the country party meaning fairly, fell in with the court and carried the votes; as they soon did upon the king's pretence to grow bold with France, and resolve upon a war, if the peace was refused.

The parliaments held afterwards in the reign of King Charles II. behaved with great spirit in passing the celebrated exclusion bill; and though the only parliament summoned by King James, acted with rather too much submission, in granting him the revenues enjoyed by his brother, and depending upon his *word* for the security of the church of England, they never gave up the true interest of their country, since they stedfastly refused some time after to coincide with his arbitrary measures.

At the glorious revolution the Bill of Rights further contributed to preserve the liberties of the people. The contents of this noble instrument are as follow:

" I. That the pretended power of suspending of laws, or execution of laws by regal authority, without consent of parliament, is *illegal*.

" II. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is *illegal*.

" III. That the commission for erecting the late court of commissioners for ecclesiastical causes and all other commissioners and courts of the like nature, are *illegal and pernicious*.

" IV. That the levying of money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in any other manner than the same is, or shall be granted, is *illegal*.

" V. That it is the right of the subjects to petition the

king, and all commitments and prosecutions for such petitioning are illegal.

“ VI. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

“ VII. That the subjects, which are protestants, may have arms for their defence, suitable to their condition, and as allowed by law.

“ VIII. That election of members of parliament ought to be free.

“ IX. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned, in any court or place out of parliament.

“ X. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

“ XI. That jurors ought to be duly impannelled and returned; and jurors, which pass upon men in trial for high-treason, ought to be freeholders.

“ XII. That all grants and promises, of fines and forfeitures of particular persons, before conviction, are illegal and void.

“ XIII. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.”

Another popular bill, which passed in this reign, was that for limiting the duration of parliaments for three years; as the people had suffered extremely during the long sitting of the house of commons in the former reigns, in which the triennial act passed by Charles I. had been repealed. To the proceedings of the house of commons at this time also, we owe our present happy situation, un-



der the house of Hanover, the succession of which was established upon the following excellent conditions:

" I. That all things relating to the well-governing of this kingdom, which are properly cognizable in the privy-council, shall be transacted there, and all resolutions taken thereupon, shall be signed by the privy-council.

" II. That no person whatsoever, that is not a native of England, Scotland or Ireland, or the dominions thereunto belonging; or who is not born of English parents beyond the seas, although such persons be naturalized or made denizens, shall be capable of any grant of lands, tenements, or hereditaments from the crown, to himself, or any other in trust for him.

" III. That upon the further limitation of the crown, in case the same shall hereafter come to any person, not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominion, or territories, not belonging to the crown of England, without the consent of parliament.

" IV. That whosoever shall hereafter come to the possession of this crown, shall join in communion with the church of England as by law established.

" V. That no pardon be pleadable to any impeachment in parliament.

" VI. That no person who shall hereafter come to the possession of this crown, shall go out of the dominions of England, Scotland, or Ireland, without consent of parliament.

" VII. That no person, who has any office under the king, or receives a pension from the crown, shall be capable of serving as a member of the house of commons.

" VIII. That further provisions be made, for the confirming of all laws and statutes for securing our religion and the rights and liberties of the people.

"IX. That judges commissions be made *Quamdiu se bene gesserint*, and their salaries ascertained and established; upon the address of either house of parliament, it may be lawful to remove them.

"X. That the princess Sophia, dutchess dowager of Hanover, be declared the next in succession to the crown of England, in the protestant line, after his majesty and the princess, and the heirs of their bodies respectively; and that the further limitation of the crown be to the said princess Sophia and the heirs of her body, being protestants."

The national meetings in Queen Ann's time, were replete with craft, faction, and perfidy; for though the honour of the Queen and the good of the public were loudly talked of, yet all was swallowed up in *self-interest*; and clamour, cabal, and confusion prevailed.

On the accession of King George I. the disorders of those times made it necessary to pass the *riot act*; which, as soon as tranquillity was restored, should certainly have been repealed; as it has since been attended with many fatal consequences, which are too recent in the minds of the public, to need a recapitulation here. The Habeas Corpus act was at this time suspended, and the obsequious house of commons, to oblige the ministry, repealed the triennial bill, and *strange to tell!* not only made all future parliaments *septennial*, but also enacted, that they themselves, who were chosen by their constituents for three years only, should *continue* representatives for seven.

The speech of a worthy member in opposition to this step, is not undeserving the attention of our readers.

He observed, that the right of electing representatives in parliament was inseparably inherent in the people of Great Britain, and could never be thought to be delegated to the representatives, unless they made the *elected* the *elector*, and at the same time, supposed it the will of the people, that their representatives should have it in their power to destroy those who made them, whenever a ministry should think it necessary to screen themselves from their just resentments: that this would be to destroy the



fence of all their freedom ; for if they had a right to continue themselves one year, one month, or one day, beyond their triennial term, it would unavoidably follow, that they have it in their power to make themselves perpetual. He further observed, that to say, the passing of this bill, was not to grasp to themselves the right of election, but only to enlarge the time of calling new parliaments, was a manifest fallacy : for whenever the three years were expired, they could be said to subsist no longer by the *choice of the people*, but by their *own appointment*.

For these reasons, he thought the bill an *open violation* of the people's *liberties* ; or to speak most mildly of it, a breach of the members trust, in that part which would most sensibly affect them ; and of that ill tendency in its consequence, that, as nothing but the security of the ministry could make it, at that time, needful, so nothing but a standing force could make it lasting.

Notwithstanding the remonstrances of thirty lords who entered their protests against this bill, because, as they observed, frequent and *new* parliaments are required by the *fundamental laws* of the *constitution* ; and *that* the bill, was, in their opinion, so far from preventing expences and corruptions, that it would rather tend to increase them, as the *longer* a parliament is to last, the more *valuable* a station in it must become, and the greater will be the danger of corrupting the members of it. Yet this extraordinary bill, on the question being put in the house of lords, was carried in the affirmative by ninety-six votes against sixty-one.

In consequence of this proceeding, various petitions were presented to the house of commons, from different parts of the kingdom, declaring that the people looked upon it, as an *attempt to overturn the constitution*. The bill, however, passed the commons, by two hundred and sixty-four, against one hundred and twenty-one, though the public had the greatest right to oppose it, both in behalf of themselves and their posterity.

About the year 1717, the monarchical mode of governing by *standing armies* was adopted by the house of commons, though great opposition was made to this step by the patriotic members.

At the beginning of the reign of his late majesty in the

year 1732, the famous excise scheme was brought into the house by Sir Robert Walpole, which striking at the very root of our liberties, raised such a tumult in the nation, that a number of petitions against the bill were presented to the house, from the city of London, Bristol, and most of the capital towns in the kingdom. This occasioned the measure to be dropped; on which the people expressed their satisfaction by the greatest transports of joy, and celebrated their triumph by burning the minister in effigy.

A short time after the accession of our present most gracious sovereign, the cyder tax occasioned a great clamour throughout the whole nation, it being looked upon as partial and oppressive, and the means of collecting it, dangerous and unconstitutional. In consequence of this, the people instructed the representatives to oppose this scheme, and petition every branch of the legislature against it; notwithstanding this, the bill passed and occasioned great discontents amongst the people, and continued in full force till it was repealed by means of the popular ministry in the year 1766.

To investigate the merits of our present unhappy disputes with the Americans, and the contest between the administration and Mr. Wilkes, would fill a considerable volume; but as the various grievances complained of by the people are enumerated in a concise and spirited manner, in the petition of the freeholders of Middlesex, it may not be unnecessary to lay it, in this place, before our readers, especially as we have already presented them with copies of the most celebrated papers that have been written in the glorious cause of liberty.

*To the King's most Excellent Majesty.*

THE HUMBLE PETITION OF THE FREEHOLDERS OF THE COUNTY  
OF MIDDLESEX.

*Most Gracious Sovereign,*

We, your majesty's dutiful and loyal subjects, the freeholders of the county of Middlesex, beg leave, with all affectionate submission and humanity, to throw ourselves at your royal feet, and humbly to implore your paternal attention to those grievances, of which this county and



the whole nation complain, and those fearful apprehensions with which the whole British Empire is most justly alarmed.

“ With great grief and sorrow we have long beheld the endeavours of certain evil minded persons, who attempt to infuse into your royal mind, notions and opinions of the most dangerous and pernicious tendency; and who promote and counsel such measures as cannot fail to destroy that harmony and confidence, which should ever subsist between a just and virtuous prince and a free and loyal people.

“ For this disaffected purpose, they have introduced into every part of the administration of our happy, legal constitution, a certain unlimited and indefinite discretionary power, to prevent which is the sole aim of all our laws, and was the sole cause of all those disturbances and revolutions, which formerly distracted this unhappy country; for our ancestors, by their own fatal experiences, well knew, that in a state, where discretion begins, law, liberty, and safety end. Under the pretence of this discretion, or, as it was formerly, and has been lately called—law of state—we have seen:

English subjects, and even a member of the British legislature, arrested by virtue of a general warrant, issued by a secretary of state, contrary to the law of the land:

“ Their houses rifled and plundered; their papers seized, and used as evidence upon trial:

“ Their bodies committed to close imprisonment:

“ The Habeas Corpus eluded:

“ Trial by jury discountenanced, and the first law officer of the crown publicly insinuating that juries are not to be trusted:

“ Printers punished by the ministry in the supreme court without a trial by their equals—without any trial at all:

“ The remedy of the law for false imprisonment barred and defeated:

“ The plaintiff and his attorney, for their appeal to the law of the land, punished by expences and imprisonment; and made, by forced engagements, to desist from their legal claim:

“ A writing determined to be a libel by a court where

it was not cognizable in the first instance, contrary to law; because all appeal is thereby cut off, and inferior courts and juries influenced by such predetermination:

" A person condemned in the said court as the author of the supposed libel unheard without defence or trial:

" Unjust treatment of petitions; by selecting only such parts as might be wrested to criminate the petitioner, and refusing to hear those which might procure him redress:

" The thanks of one branch of the legislature proposed by a minister to be given to an acknowledged offender for his offence, with the declared intention of screening him from law:

" Attachments wrested from their original intent of removing obstructions to the proceedings of law, to punish, by sentence of arbitrary fine and imprisonment, without trial or appeal, supposed offences committed out of court:

" Perpetual imprisonment of an Englishman without trial, conviction, or sentence, by the same mode of attachment, wherein the same person is at once party, accuser, judge, and jury:

" Instead of the ancient and legal civil police, the military introduced at every opportunity, unnecessarily and unlawfully patrolling the streets, to the alarm and terror of the inhabitants:

" The lives of many of your majesty's innocent subjects destroyed by military execution:

" Such military execution solemnly adjudged to be legal:

" Murder abetted, encouraged, and rewarded:

" The civil magistracy rendered contemptible by the appointment of improper and incapable persons:

" The civil magistrates tampered with by administration, and neglecting and refusing to discharge their duty:

" Mobs and rioters hired and raised by the ministry, in order to justify and recommend their own illegal proceedings, and to prejudice your majesty's mind by false insinuations against the loyalty of your majesty's subjects:

" The freedom of election violated by corrupt and undue influence; by unpunished violence and murder:

" The just verdicts of juries, and the opinion of the judges, over-ruled by false representations to your ma-



jeſty; and the determinations of the law ſet aſide, by new, unprecedented, and dangerous means; thereby leaving the guilty without reſtraint and the injured without redreſs; and the lives of your majeſty's ſubjects at the mercy of every ruſſian protected by adminiſtration:

“ Obſolete and vexatious claims of the crown ſet on foot for partial and election purpoſes:

“ Partial attacks on the liberty of the preſs: the moſt daring and pernicious libels againſt the conſtitution, and againſt the liberty of the ſubject, being allowed to paſs unnoticed, whiſt the ſlighteſt libel againſt a miniſter is puniſhed with the utmoſt rigour:

“ Wicked attempts to increaſe and eſtabliſh a ſtanding army, by endeavouring to veſt in the crown an unlimited power over the militia; which, ſhould they ſucceed, muſt ſooner or later, ſubvert the conſtitution, by augmenting the power of adminiſtration in proportion to their delinquency.

“ Repeated endeavours to diminſh the importance of members of parliament individually, in order to render them more dependent on adminiſtration collectively. Even threats having been employed by miniſters to ſuppreſs the freedom of debate; and the wrath of parliament denounced againſt meaſures authorized by the law of the land:

“ Reſolutions of one branch of the legiſlature, ſet up as the law of the land, being a direct uſurpation of the rights of the two other branches, and therefore a manifeſt infringement of the conſtitution:

“ Public money ſhamefully ſquandered and unaccounted for, and all inquiry into the cauſe of arrears in the civil liſt prevented by the miniſtry:

“ Inquiry into a pay-maſter's public accounts ſtopped in the exchequer, though the ſums unaccounted for by that pay-maſter, amount to above forty millions ſterling:

“ Public loans perverted to private miniſterial purpoſes:

“ Proſtitution of public honours and rewards to men who can neither plead public virtue nor ſervices:

“ Irreligion and immortality, ſo eminently diſcountenanced by your majeſty's royal example, encouraged by adminiſtration both by example and precept:

“ The ſame diſcretion has been extended by the ſame evil counſellors to your majeſty's dominions in America;

and has produced to our suffering fellow-subjects in that part of the world, grievances and apprehensions similar to those of which we complain at home.

*“ Most Gracious Sovereign,*

“ Such are the grievances and apprehensions which have long discontented and disturbed the greatest and best part of your majesty’s loyal subjects. Unwilling, however, to interrupt your royal repose, though ready to lay down our lives and fortunes in your majesty’s service, and for the constitution as by law established, we have waited patiently, expecting a constitutional remedy by the means of our own representatives: but our legal and free choice having been repeatedly rejected; and the right of election now finally taken from us by the unprecedented seating of a candidate who was never chosen by the county, and who, even to become a candidate, was obliged, fraudulently, to vacate his seat in parliament, under the pretence of an insignificant place, invited thereto by the prior declaration of a minister, that whoever opposed our choice, though but with four votes, should be declared member for the county. We see ourselves, even by this last act, deprived even of the franchises of Englishmen, reduced to the most abject state of slavery; and left without hopes or means of redress but from your majesty or God.

“ Deign then, Most Gracious Sovereign, to listen to the prayer of the most faithful of your Majesty’s subjects; and to banish from your royal favour, trust, and confidence, for ever, those evil and pernicious counsellors, who have endeavoured to alienate the affection of your Majesty’s most sincere and dutiful subjects; and whose suggestions tend to deprive your people of their dearest and most essential rights; and who have traiterously dared to depart from the spirit and letter of those laws which have secured the crown of these realms to the house of Brunswick: in which we make our most earnest prayers to God, that it may continue untarnished to the latest posterity.”

(Copy)

Signed by

1565 Freeholders.



We shall now dismiss this discourse, with our sincere wishes, that a speedy end may be put to the present national divisions, and that the vigour of the British constitution may remain unimpaired to the latest posterity; earnestly recommending to *those whom it may concern*, the two following excellent observations from Sir William Temple's essay's:

"The first safety of princes and states, lies in avoiding all councils, or designs of innovation, in ancient and established forms and laws, especially those concerning liberty, property, and religion, which are the possessions men will ever have most at heart; and thereby leaving the channel of known and common justice clear and undisturbed.

"The second, in pursuing the true and common interest of the nation they govern, without espousing those of any party or faction; or if these are so formed in a state, that they must incline to one or other, then to chuse and favour that which is most popular, or wherein the greatest or strongest part of the people appear to be engaged. For as the end of government seems to be *Salus populi*, the safety or welfare of the people; so the strength of the government is the consent of the people which made that maxim of *Vox populi, Vox Dei*: That is, THE GOVERNORS, WHO ARE FEW, WILL EVER BE FORCED TO FOLLOW THE STRENGTH OF THE GOVERNED, WHO ARE MANY."

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A

HISTORY AND DEFENCE

OF

MAGNA CHARTA

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He that would animate mankind to the support of freedom, which is their common cause, should himself feel, in an eminent degree, that ardour which he wishes to inspire. Even an enthusiasm therein may be deemed a holy rapture, since that by which it is produced is the cause of God; and is so great a good to the first order in his creation.

This being premised, suffer me, my dear friends and fellow citizens, to intreat you to let your sons succeed to that liberty which you have so comfortably enjoyed—for which your fathers have fought, with so much ardour, and with so much glory.—For which they sustained so many labours, so much grief, such multitudes of dangers, under the heavy hands of subtle priests, and of evil kings.

They sped in all these toilsome warfares. And how could they have failed? The nerves of men in a cause so noble are endued with double vigour. The general ardour is derived to each, because,

“When men, for this, assault a throne,

“Each adds the common welfare to his own;

“And each unconquer'd heart the strength of all acquires.”



We have lived to see the most valuable part of the charter of our most sacred rights daringly invaded;—but we will not live to see it destroyed. The wounds by which it falls shall first reach our hearts; and the rich torrents of our blood be shed, as a libation on the pile of expiring freedom.

Let us preserve the Great Charter of our liberties with the same firmness as that by which it was obtained, and by which it has been preserved to us against the repeated attacks of wicked and abandoned traitors; and this is only to be done by the firmness and intrepidity of Englishmen.

But, that my countrymen may learn thoroughly to understand the value of their birthright, I shall give the history of Magna Charta, together with a defence of it, in the homely language of an honest man, against the aspersions thrown on it by Laud and many others; and now revived by those who are the enemies of our liberties; and are therefore the enemies of our peace.

In order to this I shall first shew, That Magna Charta is much elder than K. John's time, and consequently that its birth cannot be blemished with any thing that was done in his reign, though his confirmation of it had been really extorted by rebellion. Secondly, That the confirmations which were had and procured to it, in K. John's and Henry the third's time, were far from being gained by rebellion.

First, The contents of Magna Charta is the undoubted inheritance of England, being *their ancient and approved laws*; so ancient, that they seem to be of the same standing with the nation; and so well approved, that Fortescue, applauding our laws, triumphs in this, That they passed through all the British, Roman, Danish, Saxon, and Norman times, with little or no alteration in the main. Now, says he, if they had not been liked by these people, they would have been altered. Accordingly, in this last Norman revolution, K. William I. (falsely and flatteringly called the conqueror) swore to the inviolable observation of them—under this title, “The good, ancient, and approved laws of the realm,” and particularly and by name, K. Edward's laws. So ancient is the matter and substance of Magna Charta.

Secondly, Nor was the manner and form of granting

these laws by charter, or under hand and seal, with the confirmation of an oath over and above the coronation-oath, any new invention or innovation at all; for as William I. began it, so I am sure that Henry I. and K. Stephen, and Henry II. did the same before: and therefore if the obscure birth of Magna Charta was in K. John's time, it was then born with a grey beard, for it was in being in his great grandfather's reign.

For, Thirdly, That very charter of his great grandfather Henry I. was the ground and reason of the parliament's insisting upon having the like confirmation of their liberties by K. John, and was the copy by which they went. For though K. John, at his absolution at Winchester from the pope's sentence and excommunication, had solemnly sworn to restore the good laws of his predecessors, and particularly those of K. Edward; and though presently after, at a parliament at St. Alban's, the laws of K. Henry I. were ordained to be observed throughout all England, and all bad laws to be abolished: yet, contrary to both these late engagements, he was marching an army in all haste to fall upon several of his barons, who had lately failed in following him in an intended expedition into France. But the archbishop stopped him in his career, by following him to Northampton, and there telling him that it would be a breach of his oath at his late absolution, to make war upon his subjects without judgment in parliament. The king huffed him, and told him, "That this was lay business, and that he would not delay business of the kingdom for him;" and by break of day, next morning, marched hastily towards Nottingham. The archbishop still followed him, assuring him that he would excommunicate all his followers, if they proceeded any further in this hostile way; and never left him till he had set a day for a parliament, that the barons might there answer it.

This parliament was held at London, in St. Paul's church; where, before it ended, the archbishop took some of the lords apart, and put them in mind how he made the king swear at Winchester to restore the good laws of K. Edward, and cause them to be observed by all the realm. And now, says he, there is likewise found a certain charter of Henry I. King of England, by which,



if you please, you may be able to restore your long lost liberties to their former state and condition; and, producing the charter, he caused it to be read all over in their hearing: which the lords having heard and understood, were overjoyed, and swore in the presence of the archbishop, "That when they saw it convenient for their liberties; if need were, they would spend their lives." The archbishop, for his part, promised them his most faithful aid and assistance to the utmost of his power; and after this association was thus entered into, the parliament broke up.

There had passed but one hundred and thirteen years since the grant of Henry the first's charter: and, though there were then made as many charters as there were shires (directed to the sheriff of every county to proclaim them, for this is directed to Hugh de Bockland, sheriff of Herefordshire) and, by the king's express order, were to be laid up in the abbies of the several counties for a monument; yet, because the thing was beyond the memory of man, and that age not very conversant with book-learning or records, it seems not to be known to them; and the archbishop says, "*Inventa est quoque nunc charta quædam. Hen. I.*" But, when the lords had once seen it, they were so fond of it, that they got it from the archbishop: and the next year, about Michaelmas, when the king was returning out of France, the earls and barons met at St. Edmund's bury, it might be thought for devotion, but it was to consult about their liberties; and there the charter of Henry I. which contained their laws and liberties was again produced and treated of among them. After which they all went to the high altar, and there swore in order, beginning at the greatest, "That, if the king should refuse to confirm by his charter the said laws and liberties (being the rights of the kingdom) they would make war upon him till he did." And likewise at last by common consent they came to this resolution, "That they would go together to the king after Christmas, and desire him to confirm the said liberties. And, in the mean time, that they would make such provision of horses and arms; that, in case the king should start from his late oath, wherein he promised it, (which they had too much reason to

believe, because of his doubleness) they might then compel him to performance by seizing his castles."

Accordingly, after Christmas they came to the king in a gay military habit, and desired the confirmation of their ancient liberties, as they were contained in writing in the charter of Henry I. and the laws of K. Edward. They affirmed likewise, that by his oath at Winchester, he had promised those laws and liberties, and that he was already bound to keep them by his own oath. The king seeing the constancy and resolution of the barons in their demand, did not think fit to deny them, but desired respite and time to consider of it, being a weighty business, till after Easter; and after several proposals on both sides, the king very unwillingly set a day, and the archbishop, bishop of Ely, and lord marshal were his sureties, that then they should all of them have satisfaction given them in reason. Upon this the lords went home. But the king in the mean time, by way of precaution, caused the whole realm to swear fealty to him alone against all men, and to renew their homages. And as a farther security and protection, more than out of devotion, at Candlemas following he took upon him the cross.

In Easter-week the forementioned lords met at Stanford, who now had drawn together in favour of them almost all the nobility and principal gentry of England: so that they amounted to a numerous army; and the sooner, because K. John had rendered himself universally hated. In this retinue were two thousand knights, besides all others of lower rank, horse and foot diversly armed. The king was then at Oxford expecting the coming of the parliament. On the Monday following these associated barons came to Brackley; which, when the king understood, he sent to them the archbishop, the lord marshal, earl of Pembroke, and several other sage persons, to know what were the laws and liberties they required; which they presently delivered in a schedule to those that came from the king, affirming, That if he would not forthwith confirm them under his seal, they would compel him, by seizing his castles, lands, and possessions, till he gave them competent satisfaction in the premises. Then the archbishop, with the rest of his company, carrying this schedule to the king, rehearsed all the chapters



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or heads of it before him memoriter. But when the king understood the purport of it, he laughed and said with the utmost indignation and scorn, "And why not the barons, together with these unjust demands, demand my kingdom? The things they ask," said he, "are idle and superstitious, and not supported by any title or pretence of reason." And at length, in a great rage he affirmed with an oath, that he would never grant them such liberties, whereby he himself should be made a servant.

When, therefore, the archbishop and earl of Pembroke could, in no wise, gain the king's consent to these liberties, by his command they returned to the barons, and there reported just what the king had said in order. Whereupon the barons presently chose them a general, and flew to their arms, and marched directly to Northampton to seize that castle. But having spent fifteen days in that fruitless attempt, having no petards, nor other warlike instruments to carry on a siege, somewhat abashed with this disappointment, they marched to Bedford, where they were kindly received; and by messengers sent to them from the principal citizens, were invited to London. When they were come thither, they sent letters to all the earls, barons, and knights, that as yet seemed to adhere to the king, though it were but feignedly; that as they tendered their estates, they should leave a perjured king, and come and join them, and effectually engage with them for the liberties and peace of the realm; otherwise they threatened to treat them as public enemies. Upon which, most of the lords, who had not as yet sworn to the said liberties, wholly leaving the king, came to London, and there associated with the barons.

King John, seeing himself thus generally forsaken, so that he had hardly seven knights remaining with him, and fearing, lest the barons should insult his camp, which they might easily have done without opposition, he betook himself to fraud and dissembling, pretending peace, when he had immortal war in his heart, resolving hereafter to oppress the barons singly, whom he could not all at once. He therefore sends to them the earl of Pembroke and other persons of credit with this message, "That for the benefit of peace, and for the advancement and honour

of his realm, he would willingly grant them the laws and liberties which they desired," leaving to the barons to appoint a convenient time and place for the performance. They very gladly set the king a day, to meet, June 15, at Running-mead, betwixt Stanes and Windsor, an ancient place for the meeting of parliaments.

The king and the lords accordingly met, and their parties sitting asunder, and keeping to their own side, treated of the peace and the liberties a good while. There were present as it were of the king's party, the archbishop, and about thirty principal persons more, whom Matthew Paris names; but, says he, they that were on the barons' side were past reckoning, seeing the whole nobility of England gathered together in a body seemed not to fall under number. At length, after they had treated in several forts, the king seeing the barons were too powerful for him, made no difficulty to grant them the laws and liberties underwritten, and to confirm them in his charter in this manner.

Here follows Magna Charta in Matthew Paris. And because there was not room for the liberties and free customs of the forest in the same parchment, they were contained in another charter, *De Foresta*. And then follows the security for them both.

After this, the king sent his letters patent to all the sheriffs in England, to cause all persons, of what condition soever, to swear, That they would observe these aforesaid laws and liberties, and to the utmost of their power, distress the king by seizing his castles, and otherwise straiten him to the execution and performance of all things contained in the charter. At last, the parliament being ended, the barons returned to London with their charters.

Thus have I given you a short view of the noble conduct of the barons in their manner of obtaining the confirmation of their charter from K. John. The restitution of Magna Charta you may call it, for the birth of it you see it was not. What I have recited is undoubted history and record, and clear matter of fact. And I have confined myself only to these three last years, in which the barons were in pursuit of this business, and took the quickest steps towards it: and above all, were put into a



right method by the advice of Stephen Langton, the archbishop, to claim their estate with the writings of it in their hand. For above a dozen years before, in the third of this king's reign upon a summons of his to the earls and barons to attend him with horse and arms into Normandy, they held a conference together at Leicester, and by general consent they sent him word, "That unless he would render them their rights and liberties, they would not attend him out of the kingdom." But that impotent demand of their liberties, by the by, did them no good, but exposed them to still more and more intolerable oppressions. They should have gone to him according to their summons, they should not have sent. Not to mention that his faith was plighted by the archbishop Hubert, William lord marshal earl of Pembroke, Geoffrey Fitz-Peter, chief justiciary of England, (whom he sent as his commissioners to proclaim and keep the peace immediately after the death of his brother Richard) "That the earl John would restore all men their rights."

This was done at an assembly of the peers at Northampton, before his coming out of Normandy to be crowned. "Sub tali igitur conventionione comites & barones comiti Johani fidelitatem contra omnes homines juraverunt." Upon these terms, and no otherwise, the barons swore fealty to him: which made K. John so much rejoice at Geoffrey Fitz-Peter's death, and swear, "That then, and not before, he was king and lord of England." For, from thence-forward, says Paris, he was more at liberty to contravene his oaths and covenants, which with this Geoffrey he had made sore against his will; and loose himself from the bonds of the peace he had entered into. Now these pacts and covenants are clearly that before his coronation, which I have just now recited, and that at this parliament at St. Alban's, anno 1213, not a year before this great man's death. Where the king's peace was publicly declared to all his people; and it was strictly commanded, on the king's behalf, "That the laws of his great grandfather, Henry I. should be kept by the whole realm, and all unjust laws abolished." In both these affairs he transacted for the king, having in this last, together with the bishop of Winchester, the government

of the kingdom committed to him, the king being then absent, on his way to France.

Thus the barons at last have their long lost rights restored and confirmed, to the universal joy of the nation: but this is soon overcast. For King John immediately resolves to undo all that he had done, being prompted thereto, not only by his own arbitrary and tyrannical disposition, but also by his foreign mercenaries, whom he had long made his favourites and confidents, while he looked upon his own natural subjects as abjects. The Flanders Ruyters, or cavaliers, who now by Magna Charta were expressly, and by name, ordered to be expelled the kingdom, as a nuisance to the realm; these being grown his saucy familiars, so followed him with derision and reproaches, "For unkinging himself by these concessions, and making himself a cypher, and our sovereign lord of no dominions, a slave to his subjects," and the like, that they made him stark mad: and being given over to rage and revenge, he privately retires to the Isle of Wight, where, as Paris says, he provides himself of St. Peter's two swords. He sends to the pope, whom he bribes with a large sum of money, besides his former surrender of the kingdom, to cancel and annul Magna Charta, and to confound it with his apostolical authority; and withal, to excommunicate the barons for it: and at the same time he sends the bishop of Worchester lord chancellor of England, the bishop of Norwich, and several other persons, to all the neighbouring countries, to gather together all the foreign forces they could, by promises of lands and possessions; and if need were, to make them grants under the great seal, and to bring them all to Dover by Michaelmas.

This three months he spent incognito, in and about the Isle of Wight, coasting and skulking about, and sometimes exercising piracy out at sea; so that it was not then known where he was, nor what was become of him; but thus he whiled away the time, contemplating his treason, and waiting for the incomprehensible enemy-friends he had sent for. I know not whether this desertion, and not providing for the government in his absence, and sending the great seal of England, upon such an errand, out of the realm, may not, with some men, amount to a



modern abdication. but I am sure that this, which follows, is enough to justify the expulsion of a whole race of Tarquins. After Michaelmas he sailed to Dover to meet his outlandish scum, with which he invades his own kingdom. Such an execrable desperate crew never set foot upon English ground, so fitted for mischief, and that thirsted after nothing more than human blood, whom his agents had drawn together out of Poitou, Gascony, Lorraine, Brabant, Flanders, and weeded all the neighbouring continent for them. These made up a vast army, notwithstanding the shipwreck of Hugh de Boves, who was bringing forty thousand more, besides women and children, who all perished in a storm betwixt Calais and Dover. This freight of women and children, several of whom were afterwards driven ashore in their cradles, were intended to plant the two counties of Norfolk and Suffolk, after the extirpation of the English; for it is said, that this Hugh had a charter of inheritance given him of these two provinces.

But with these forces he had, he over-run England and wasted it with fire and sword in such a manner, as no Englishman can read the history of it without being in pain and torment. There is such a scene in Matt. Paris, p. 276. as was never seen again, unless in the French and Irish massacres: it looks like hell broke loose. For these Satellites Satanæ, the Devil's life-guard, as Matt. Paris calls them, seemed to have premeditated malice against mankind; and being led on "a crudeli rege, imo cruento tyranno," by a cruel king, nay, it was a bloody tyrant; no furies could put innocent people in cold blood, of all ages and conditions, to more exquisite tortures, nor sport themselves more in making havoc and desolation than they did. And with this horrid ravage he over-run England, and proceeded as far as Berwick in half a year's time; all the castles of the barons falling to him, either surrendered, or for the most part abandoned.

In the mean time, most of the barons were at London, where we left them, making holiday for the grant of Magna Charta, and pleasing themselves, that after so long oppression and Ægyptian bondage, the liberties of England were restored again in their days. They thought, likewise, that God had touched the king's heart, and he

was become a new man : and meant the good faith he had sworn ; and flattered themselves that he would, from henceforward, inviolably observe their charters. But they were interrupted in this thought by the private intelligence they had, that he had given orders to his foreigners, in whom his soul trusted, to fortify and furnish his castles with men and provisions, and to store them with all manner of artillery ; but to do it so warily, that it might not come to the knowledge of the barons. This boded no good ; for here was Magna Charta concerning the expulsion of foreigners broken already ; and therefore, some of the barons went to the king at Windsor, to know more of this matter, and to try, by gentle and wholesome advice, to bring him to a better mind. He received them with a blithe countenance, and thereby palliated the inward venom ; and swearing by God's feet, he assured them, that he had no ill purpose, and bantered and laughed them out of their story. Nevertheless, before they left him, they gathered such marks of his aversion to them, and that all was not well, that they went back to London lamenting, and saying, " Woe to us and to all England, which wants a king that will speak truth, and is oppressed by a false underhand tyrant, that uses his utmost endeavours to subvert a miserable kingdom."

The very night after this conference with the barons, it was, that he stole away from Windsor to the Isle of Wight, and there laid his hellish plot against the nation : which was so deep, that it did not enter into the hearts of the barons to suspect or imagine. They had now recovered the rights of the nation, which was nothing but their own, and had been most unjustly detained from them ; and they never intended to have, nor sought for more. But, because the king went away in a bad mind, and because they had certain notice that nothing but their departure from London was wanted in order to surprise it ; they therefore adjourned their tournament, which they had before appointed on the Monday after the feast of St. Peter and St. Paul at Stanford, to be held the Monday sevensnight after at Hounslow, near London, both for the safety of the city and their own. This they certified in their letter to William Albinet, who was gone down to his castle of Beauvoir, and withal desired him by all



means to make one at it, and to come up well provided with horses and arms, that he might win honour. For he who performed best was to have a bear, which a certain lady would send to the tournament. With such frivolous and idle actions, says Matthew Paris, did they entertain themselves; little knowing what cunning snares were laid for them.

Still they remained at London; and, for want of better employment, spent their time yet more vainly, in eating and drinking, and sitting up all night at the expensive dye, which however does not look like plotting; for, if they had been so minded, it had been easy for them, in the king's absence, to have taken very great advantages against him. But they, meaning no hurt, had reason to expect none; and therefore the invasion after Michaelmas fell suddenly upon them like a tempest, or Hugh de Boves's storm. And being wholly unprovided to resist such an inundation as this, they thought the best way to put a stop to it, would be by presently throwing in a good garrison into the castle of Rochester, that the king might not come immediately to besiege London. Accordingly they made choice of William d'Albinet who was just come from his own castle, and a noble band of seven-score knights with their retinue for this service. When they came thither, they found nothing but bare walls, neither provision, nor arms, nor any thing but what they had brought along with them; insomuch that many of the noblemen repented their coming down, and would have returned: but William d'Albinet over-perswaded them to stay, and told them it would be dishonourable to desert what they had undertaken. They therefore got together what provision they could out of the town in that short space, for within three days the king and his army were with them, and had blocked them up. There they behaved themselves like great men; but the siege lasting long, they were so straitened for provisions, that they were forced at last to eat their horses. Being thus in distress, the barons at London, though with the latest, remembered their oath, to relieve them in case they were besieged, and marched out with a pompous army as far as Dartford; but there the gentle south-wind met them, and blew in their faces and though it used not to be

troublesome to any body else, yet it drove them back, as if it had been drawn swords, to their known den at London. This scoffing reason is all that Matthew Paris will give for their shameful retreat, and deserting their companions; but no doubt, it was some panic fright from the reports of the country, concerning the numbers and condition of the king's army: for he himself elsewhere tells us, That they were such, as struck a terror into every body that beheld them. This piece of cowardice makes the king insult, and push on the siege with the greater fury, which only lost many the more men: for they defended themselves to a miracle, and lost but one knight during the whole siege. But at last their provision failed them; and, when they had not one morsel left, on St. Andrew's day, they all went out and surrendered themselves to mercy. The king immediately ordered them, barons and all, to be hanged up. But in this, Savaricus de Malloleone, who was himself a nobleman, withstood him to the face, and told him, that as yet, it was but a young war, and no body knew what the chances of it might be: it might be his hap, or any nobleman's else, to fall into the hands of the barons, who would be taught, by this example of his, how to use them; and that nobody would serve him upon those terms. With much ado the king yielded to his advice, though it was likewise the opinion of all the wisest about him: and so he sent William Albinet, and many others to be kept close prisoners in Corf castle, others to Nottingham and other prisons, but gratified his cruelty in hanging up their servants.

One day, during this siege, the king and Savaric were viewing the castle, to discover where it was weakest. The best marksman that William d' Albinet had, knew him, and said, " My lord, may it please you, shall I now kill the king, our bloody enemy, with this dart, which I have here ready?" " No, no," says he, " you wicked glutton; God forbid that we should procure the death of the Lord's anointed!" Says the other, " If it were your case, he would not spare you." Says William, " God's will be done, God shall dispose of that, not I." Herein, says Matthew Paris, he was like David sparing Saul, when he could have killed him. This passage was not unknown to the king, and yet, for all that, he would



not spare him when he was his captive, but would have hanged him if he had been suffered to do it.

After the siege of Rochester castle, where the flower of the barons was lost, King John, notwithstanding, did not think fit to attempt London (where, though the barons did not judge themselves able to take the field, yet were desperately resolved to live and die together) but he marched to St. Alban's, and the 20th of December divided his army into two; one of which he himself led to lay waste with fire and sword northwards; the other he left to do as much for all the neighbouring counties about London, and to be sure to keep that place blocked up. He, with his army, lay the first night at Dunstable; but after a little rest, he was so intent upon his business, that before day he marched toward Northampton, and carried such a Christmas into those parts, as they never had seen. For besides his plundering and destroying all the houses, parks, and possessions of the barons, his manner was still, as he went along, to order his incendiaries to fire the hedges and villages, which could not be turned into plunder, "That he might refresh his fight with the damages of his enemies;" Matt. Paris, recalling that word, "If," says he, "they are to be called his enemies, who were only willing to introduce him into the way of justice and humanity." They were, indeed, his best friends in it, but they paid very dear for that good office.

For before this, the spiritual sword came likewise brandishing out against them, and they were run through and through with the pope's excommunications. He first issued out a general excommunication against them, which they did not mind, nor think themselves concerned in, as being not named in it, nor indeed described. For they were none of the *disturbers of the peace* that were there mentioned, who turned the kingdom upside down, and were worse than the Saracens, for endeavouring to expel their cross-bearing king from his realm (which they had never attempted nor intended) who, as he had engaged himself, so it was to be hoped he would accordingly go and succour the holy land. And therefore the pope was forced to curse them over again by name; and reciting some of the principal of them, he involved all their par-

*takers and adherents* in the same condemnation; and to make sure work, he laid the city of London under an interdict. As for their poor charter, that was very short-lived; for it bears date June 15, and was made void and disannulled by the pope the Bartholomew-day following. The barons, indeed, despised all these swaggering proceedings of the pope against them, as knowing that the causeless curse will never come, and alledging, that it was all upon false suggestions, and that he usurped an authority in matters which did not lie before him. "For who made him a judge, or divider of inheritances?" A power which St. Peter never had, and which his humble master declined when it was offered him. But though this pontifical ware was regarded at London as it deserved, where the prelates likewise did not think fit to publish it, yet in that superstitious age it could not fail to influence weak minds, when all the subjects of England were enjoined to be aiding to King John against the barons, *for the remission of their sins*. For who that had a soul to save, would not kill a baron if he could? It was King John's holy war. And it must needs strangely heighten and animate his insolent crew, to see themselves thus backed with divine authority, and would make them play the devil in God's name. Thus the sword helped the sword, and the spiritual one whetted and set an edge upon the material.

It was the misery of the barons to have their country over-run in this manner, and not be in a condition to help it. As for their own losses, they did not mind them. When messengers came thick with bad tidings, that their castles and possessions were gone and destroyed, they only looked upon one another, and said, "The Lord gave and the Lord hath taken away." When they heard how their wives and daughters were abused, they vented themselves by inveighing bitterly "Against the pope and his dearly beloved son in Christ, John." But when they thought of England, England! then they lamented indeed, and laid the ruin of it deeply to heart. And resolving to have done with such a barbarous tyrant, and to chuse a new King; after some debate, they unanimously agreed upon Lewis, the dauphin of France. Their main reason was, because the most of K. John's army being subjects of France, upon the first appearance of Lewis, they would



be apt to join him, and leave K. John, whereby of necessity he would be soon brought to reason, and in all probability, it would be a very short war. Lewis readily accepted their offer, and came over upon the security of twenty-four of the principal barons' sons for hostages; and being joyfully received at London by the barons, had homage and fealty sworn to him, and he himself swore "To restore them their good laws and their lost inheritances." After which, he wrote to the King of Scotland to come and do him homage, and to all the great men of England to come and do the like. or else immediately depart the kingdom. Upon which, the earls of Warren, Arundel, Salisbury, K. John's brother, and the earl marshal's son, with many others, readily obeyed this summons, and left K. John, as did his foreigners. all but the Poitovins; some of them returning home with their spoils, and the rest coming over to the dauphin.

From the first arrival of Lewis, K. John never stood his ground; and though he came with his great army to Dover to hinder his landing, yet he durst not trust that army to engage, but leaving a strong garrison in Dover castle, he took a run to Guildford, and from thence to Winchester without stopping: whereby he both gave Lewis a free passage to London to join the barons. and also lost most of his new conquests in less time than he gained them. But the King of France undervalued all his son's successes, swearing that he had not gotten one foot of ground in England till he was possessed of Dover castle, which made him undertake a vigorous, though fruitless siege of that place: where, in a short time, the King of Scotland came and did him homage.

But, while the dauphin was engaged in that siege, there happened an accident which altered the whole scene of affairs. The Viscount of Melun, a nobleman of France, who came over with Lewis, fell very sick at London. And, finding himself at the point of death, he sent for some of the barons of England, who were left to take care of the city, to come to speak with him; to whom he said. "I am grieved for you, at the thoughts of your desolation and destruction, because you are wholly ignorant of the perils that hang over your heads; for Lewis has taken an oath, and sixteen earls and barons of France

with him, that, if ever he get England, and be crowned King, he will condemn all the barons that are now in arms with him against K. John, to perpetual banishment, as traitors against their sovereign lord, and will extirpate the whole race of them out of the land. And lest you should doubt of the truth of this, I that lie here ready to die, do affirm to you upon the peril of my soul, that I myself was one of those that were engaged with Lewis in this oath. Wherefore I now counsel you, by all means, to look carefully to yourselves hereafter, and to make the best use of what I have told you, and to keep it under the seal of secrecy." When this nobleman had thus said, forthwith he expired. When this dying secret came to be spread among the rest of the barons, they were sadly cast down, finding themselves surrounded with difficulties, and perplexed on every side. For, as a concurrent proof of what viscount Melun had said, Lewis, instead of restoring them to their rights, according to his oath, had given all the lands and castles of the barons, as fast as he won them, to his own Frenchmen: and though the barons grumbled at this, yet they could not prevent it. But what they laid most to heart was, that he had branded them as traitors. They were excommunicated every day, and despoiled of all terrene honour, and driven to all extremities of body and soul. In this miserable perplexity, many of them thought of returning and reconciling themselves to K. John, but that the breach was too wide. They were plainly at their wits end, and were willing to do any thing to be rid of this perjured and perfidious foreigner, who had thus ungratefully entered into a desperate conspiracy against them.

During this tedious siege of Dover castle, where Lewis and many of his barons were sure to be maintained, K. John, who had been dodging up and down, took this opportunity of making a terrible inroad into the counties of Norfolk and Suffolk, where he made his usual progress northward: as if he had taken up a resolution to live and die in his calling. For one of the last things he did before he sickened, was burning to ashes all the stacks of corn as he went along in all the manors of the abbot of Croyland, which were but just inured that harvest. He was first indisposed at Swinethed abby, but his illness in-



creasing, he could hardly reach Newark castle; and there, by the advice of the abbot Croestoun, he confessed, and received sacrament. After which, he appointed his eldest son Henry, his heir, and ordered the realm to swear to him and sent his letters under his seal to all the sheriffs and castellaus of the kingdom to be attendant on him. Just when he was dying, there arrived messengers from some of the barons, about forty of them, with letters to be reconciled to him; but he was not in a condition to mind such affairs.

In ten days time after K. John's death, that party which had adhered to him, with Guallo the pope's legate, made haste to crown his son at Gloucester. And because he was not yet ten years old, and so no ways concerned in the detested cruelties of his father, and might be used as an expedient to drive out an already hated and insolent foreigner, he was presently accepted by the kingdom; while on the other hand, upon the first knowledge of K. John's death, Lewis had, in his own conceit, wholly subdued and swallowed up the kingdom: but he found the contrary in summoning Dover castle upon this occasion, thinking to have had the castle for his news; for he met with such a resolute denial as he took for an answer, and broke up the siege. Afterwards he took some few places; but the young King's party still increasing, and many of the barons, by degrees falling from him, and the forces he had sent for out of France being utterly defeated at sea, and all sunk or taken, and he and the barons that were with him being closely besieged in the city of London, he was forced to come to this composition: "That Lewis and all his foreigners should depart the kingdom, and that he should never lay claim to it hereafter, but restore what belonged to the King in France, and to have fifteen thousand marks for his voyage." And on the other hand, the King, the legate, and the great marshal, being protector, swore. "That they would restore to the barons, and all others of the realm, all their rights and inheritances, with all those liberties which they had before demanded, for which the war had begun betwixt K. John and the barons." This composition was made by both parties in an island in the Thames, near the town of Stains, September 11, A. D. 1217.

So that within two years and three months, Magna Charta had been granted and destroyed, and damned by the pope; and revived, and renewed again by fresh oaths, and that even of the pope's legate.

I shall very briefly shew what fate it had in the reign of Henry III. for I do not remember any fighting about the confirmation of it in any succeeding reign; wherein I shall only recite the matter of fact, reserving the matter of right till afterwards.

In the fifth year of his reign he was crowned again at Westminster; and three years after, which was the eighteenth of his age, at a parliament at London, he was desired by the archbishop and the other lords to confirm the liberties and free customs for which the war was first moved against his father. And, as the archbishop evidently shewed, the King could not decline the doing of it; because, upon the departure of Lewis out of England, he himself had sworn, and all the nobility of the realm with him, that they would observe all the said liberties, and have all others observe them. Upon which, William Brewer, who was one of the privy-council, made answer in behalf of the King, saying, "The liberties you desire ought not in justice to be observed, because they were extorted by violence." Which speech the archbishop taking very ill, rebuked him: "William, quoth he, if you loved the King, you would not be a hindrance to the peace of the kingdom." But the King, seeing the archbishop going to be very angry, said, "We have all of us sworn to these liberties, and we are all bound to observe what we have sworn." And, forthwith taking advice upon it, sent his letters to the sheriff of every county, to cause twelve knights or legal men to make an inquisition upon oath what were the liberties of England in the time of K. Henry, his grandfather, and to make him a return of it by a certain day.

This vowing, and afterwards making inquiry was ill resented, and was one of the false shifts which were so peculiar to that prince. The motion of the archbishop was so manifestly necessary for the settling the young King in his throne, that our historian Daniel, says, it was *impudently* *oppugned* by William Brewer: and, indeed, the reflections he makes on the whole passage are very remark-



able from the pen of a courtier. I only observe, that William Brewer was the fittest interpreter of an arbitrary prince's mind; for he was an old arbitrary instrument, and one of King John's generals in his barbarous invasion: and though he himself had since sworn to Magna Charta, that made no matter; for such false changes and conversions always turn cat again, as soon as they find game, and spy a mouse.

The next year the King being declared by the pope's bull of full age, and Lewis being now King of France, and keeping possession of all the King's dominions beyond the seas, at a parliament held at Westminster, he desired a fifteenth for the recovery of them. And though many of the earls and barons had thereby lost their inheritances as well as the King, yet the whole assembly agreed in this answer: "That they would freely grant the King what he desired, but upon condition, if he would grant them their long desired liberties." The King, out of covetousness of this aid, had charters presently written and sealed, and sent to all the counties, and an oath in writing, for all men to swear to them; while Richard, the King's brother, because they had hitherto been ill kept, cried out they were cozening charters.

Matthew Paris says, he therefore forbears to recite the tenor of these charters, because he had done it before in K. John's reign. for the charters of both Kings were alike. "In nullo inveniuntur dissimiles."

Two years the land rested, enjoying their liberties which were punctually kept, till the King at a parliament at Oxford declared himself to be of full age, and took that occasion to have a new seal, and to cancel the charter of the forests, as granted in his minority, and to cause all that would enjoy the benefit of that charter, to take out particular charters under his new seal: for which they paid exorbitant fines, such as his chief justiciary pleased.

Upon this, and a great oppression of his brother Richard soon after, the earls and barons were up in arms, and had drawn together a great body of men at Stanford; from whence they send him a message *in very big words*, That he, forwith, make amends to his brother for the injury done him, the fault of which they lay upon the

justiciary; and that he should immediately restore the charters of the forest which he had cancelled at Oxford, and send them to them sealed, grievously denouncing, "That otherwise they would compel him with their swords." Whereupon he called a parliament to Northampton, and gave them full satisfaction for their demands.

Six years after, the barons had an outrageous violation of Magna Charta to complain of, and an intolerable grievance to the nation: For the king had not only filled the offices of his court with Poitovins, to the great oppression of his natural subjects, but also had invited in two thousand Poitovins and Britons, with which he garrisoned his castles. Upon this, earl Richard the marshal of the kingdom, taking several of the lords along with him, went boldly to the king, and openly reprov'd him, that because by evil council he had called in Poitovin foreigners to the oppression of his realm, and natural born subjects of the realm, of their laws likewise and liberties; wherefore he humbly besought the king that he would speedily reform such abuses as these, which were the imminent destruction of his crown and realm. Moreover he affirmed, that if the king refused this proceeding, both he and the rest of the noblemen of the kingdom would so long continue to withdraw themselves from his councils, as he consorted with foreigners. To this, Peter, bishop of Winchester, who was prime minister, made answer, That it was very lawful for our lord the king to call in what foreigners he pleased for the defence of his kingdom and crown, and even such and so many as might be able to compel his proud and rebellious subjects to their duty. The earl marshal and the lords went away very much dissatisfied with this answer, and promised to one another that in this cause, which concerned the whole nation, they would manfully fight it out to the separation of their souls from their bodies.

In the mean while, the bishop of Winchester and his accomplices had so far perverted the king's heart to hate and despise the English nation, that he studied the extirpation of them all manner of ways, and by a few at a time, invited over so many legions of Poitovins, that they almost filled all England; with troops of which, wherever the king went, he still was walled in and environed.



Nor was any thing done in the kingdom but as the bishop of Winchester and this rout of Poitovins ordered it. The king then calls a parliament to meet on Midsummer-day at Oxford, but the aforefaid associated lords would not come at his summons, partly for fear of the lying in wait of these foreigners, and partly out of the indignation which they conceived against the king for calling in aliens in contempt of them: upon this, it was judicially decreed, that they should be summoned twice and thrice, to try whether they would come or no. Here at this assembly at Oxford, Roger Bacon, while he was preaching the word of God before the king and the bishops, told him roundly, That he would never enjoy any settled peace, unless he removed the bishop of Winchester and Peter Rivallis from his councils. And when others who were present protested the same thing, the king began a little to recollect himself, and incline to reason, and signified to the associated barons that they should come to a parliament July 11, at Westminster, and there, by their advice, he would rectify what was fit to be amended. But when the barons had heard that many free-booters were called in by the king with horses and arms, and that they had arrived by degrees, and but a few at a time, and could see no footsteps of peace, but likewise suspected the innate treachery of the Poitovins, they let alone going to the parliament; but they sent him word by solemn messengers, That setting aside all delay, he should remove the bishop of Winchester and all the Poitovins from his court: But, in case he would not, they all by the common council of the kingdom would expell him and his evil counsellors out of the realm, and proceed to the creation of a new king.

The king was struck with this message, and the court were very much concerned at it, fearing lest the error of the son should be worse than his father's, who was very near being driven out of his kingdom, and making good the name which was given him by a kind of presage of John the Exile. But bishop Peter gave the king advice to make war upon these rebellious subjects, and to bestow their castles and lands upon the Poitovins, who might defend the realm of England from his traitors; bragging that he both could and would give deep and not soundrel

counsel: for time was when he had governed the emperor's council in the east, and that his wisdom was formidable both to the Saracens and to other nations. So the king, returning again to the wrong, first wreaked his anger upon Gilbert Basset, whom, having seized a manor of his and he coming to claim his right, he called traitor, and threatened if he did not get out of his court to have him hanged. And he likewise commanded Richard Seward a warlike knight, that had married this Gilbert's sister or niece without his licence, as he said, to be taken up. And indeed being jealous of all the other noble and powerful men of the kingdom, he required hostages of them, such and so many as might satisfy him that they would not rebel.

To the parliament at Westminster, August 1. the earls and barons came armed, and the earl marshal was on his way coming to it; but going to lodge at his sister's house who was wife to Richard the king's brother, she advertised him of his danger, and that he would be seized. He being a man of a noble breast, could not readily believe woman's talk till she made it out; and then night coming on he rode another way, and never drew bit till he came well wearied into Wales. There were many earls and barons at this parliament, but there was nothing done in it because of the absence of the earl marshal, Gilbert Basset, and some other lords.

After this, the king, by the advice of the bishop of Winchester, gave summons to all that held of him by knight service, to be ready with their horses and arms at Gloucester, a week before assumption-day. And when the earl marshal and many others that were associated with him, would not come at that appointed time, the king as if they had been traitors caused their houses to be set on fire, their parks and ponds to be destroyed, and their castles to be besieged. These that were said to be associated were very noble persons, and there were many others no mean men that adhered to them: all these did king Henry cause to be proclaimed outlaws and banished men, without the judgment of his court and of their peers, and gave their lands to the Poitovins, and thereby adding sorrow to sorrow, and redoubling their wounds.



He gave commandment likewise that their bodies should be seized wherever they could be found within the realm.

In the mean time, bishop Peter does what he can to weaken the marshal's party, and corrupted the earls of Chester and Lincoln with a thousand marks (cheap lords!) to leave the marshal and the cause of justice, and to be reconciled to the king and to be of his side. For as for Richard the king's brother, he was gone off from the marshal some time before. When the marshal had heard all this, he entered into a confederacy with Lewellin prince of Wales, and other peers of that country, who swore none of them would make peace without the other. Within a week's time after the appointed rendezvous at Gloucester, there arrived at Dover many armed men from the parts beyond the sea, and Bald de Gysnes with a force out of Flanders who came to the king at Gloucester. This force, with what he had before, made a numerous army, with which he advanced to Hereford.

After this, the king, by the advice of bishop Peter, sends a defiance to the marshal by the bishop of St. David's. and thereupon marches to make war upon him, and lays siege to one of his castles. But when he had furiously assaulted it many days in vain, and his army wanted provisions, so that there was a necessity of raising the siege, the king grew ashamed of his enterprise: whereupon he sent several bishops to the earl marshal to desire him to save the king's honour; and, that he might not be thought to have made a siege to no purpose, to surrender him the castle upon these conditions: First, that he would after fifteen days restore to the earl marshal the castle again entire, and in the same state it was. And secondly, that in the mean time he would reform and amend all things that were amiss in the kingdom, by the advice of the bishops, who were his sureties for the performance of these things. And to perfect and complete all this, the king appointed the marshal and the banished lords to come to a parliament, which he meant to hold at Westminster the first week after Michaelmas.

When the fifteen days were out, from the time of the marshal's surrender of his castle into the king's hands, upon condition, that after that term he should have it restored to him again, the marshal sent to the king, to de-

liver him back his castle according to the covenant, of which he made the bishop of Winchester and Stephen Segrave the justiciary his sureties, which likewise they had confirmed by taking an oath. But the king answered with indignation, that he was so far from restoring him that castle, that he would sooner subdue all the rest he had. When therefore, the marshal saw that there was no faith nor oath, nor peace kept by the counsellors of the king, he gathered an army and besieged his own castle, and with little ado won it. The king was, at this time, holding his parliament as he had promised his great men, that by their advice he might redress those things which were amiss; but the evil counsel he then followed, did not suffer it to be done. Though many that were there present, humbly besought him for God's sake, that he would make peace with his barons and nobles. And other persons in favour with the king, namely, the friars, predicants, and minorites, whom he used to reverence and hearken to, these earnestly exhorted him, that he would study to carry himself lovingly as he ought to do towards his natural subjects, whom without judgment of their peers he had driven into banishment, burned their manor-houses, cut down their woods, destroyed their ponds; and being led and misled by the bad counsel of bad men, sets aside his lieges whose native blood would never suffer them to warp, and prefers other whistling people before them; and, which is worse, calls those traitors by whom he ought to order the peace and counsels of the realm, and settle all affairs. To this the bishop of Winchester made answer, that the peers of England are not as they are in France; and therefore the king may judge and condemn and banish any of them by his own justices of his own appointing. The bishops hearing this, as it were with one voice, began to threaten that they would excommunicate the principal of the king's evil counsellors by name; and they named the bishop himself as the ring-leader of them, and his kinsman Rivallis, the justiciary, and the treasurer. To whom the bishop answering, alledged, that he was consecrated bishop at Rome by the pope, and was exempted from their power, and appealed to the apostolic see. And so the bishops only excommunicated in general all



those that had or should alienate the king's heart from his natural subjects of the realm, and all that should disturb the peace of the realm.

In this parliament the king had tidings that the earl marshal had taken his castle in Wales, and killed several of his knights and servants. At which the king was much incensed, and commanded the bishops to excommunicate him; but it was the answer of them all, that it would be an unworthy thing to excommunicate a man for seizing a castle that was all his own, and for taking possession of his own right. But the king still enraged, summoned again all his knights with horses and arms to Gloucester, the morrow after all-saints: and there he gathered a numerous army and entered Wales, breathing and panting after the destruction of the marshal. But he, like a provident warrior, had beforehand driven away all the cattle, and withdrawn all provisions, so that the king had no subsistence for his army in those parts, but was forced to march another way, and came to the castle of Grosmund. Where, while he spent some days, the marshal and his associates sent scouts to discover the posture of his army; and, on Martinmas-night, all of them but the marshal, who would not invade the king, with a good army surprised the king's camp. where they fled away almost naked: and the conquerors on the other side would not hurt any of them nor take one prisoner, excepting two knights, who indiscretely making resistance were killed, rather by themselves than by the others. But they took away all their carriages and provisions, money and arms, and so retired again into their strong holds.

I believe such a modest victory was never read of; and Matt. Paris pleasantly calls them for witnesses of the truth of this rout, who run away and lost all they had in it: the bishops of Winchester and Chichester, Segrave the justiciary. Rivallis the treasurer, the earls of Norfolk and Salisbury, and many more. The King, who had been left even as good as alone amidst the enemies, when all was over, put some of his Poitovon dragoons into his Welch garrisons to prevent incursions, and so returned to Gloucester, where he kept his Christmas. But in the mean time, on St. Katherine's-day, the marshal

made a great slaughter of the Poitovins at Monmouth : and he and the banished lords watched the king's castles so narrowly, that when any went out of them abroad for prey, they took nothing else of them for their ransom but their heads ; insomuch, that in a short time there lay dead such a multitude of these foreigners in the high-ways and other places, as infected the air.

As for the discourse which passed betwixt the marshal and friar Agnellus, who was familiar to the king and his counsellor, and came into Wales to tell the marshal what the king and his counsellors said of him, and to make overtures to him, it is too long to be here inserted, but is exceedingly well worth the reading as it stands in *Matt. Paris*, p. 391, 392, 393 : wherein the marshal makes such a solid defence of his whole proceeding, and discovers so well a grounded zeal for the rights of his country, as is sufficient to inspire every English breast with the love of a righteous cause. Friar Angellus tells him, that the king's counsellors would have him submit to the king's mercy, and that, besides other reasons, it was his interest so to do ; because the king was richer and more powerful than he ; and as for foreign aid, where the marshal could bring one stranger the king could bring seven. The marshal replies " It is true, the king is richer and more powerful than I ; but he is not more powerful than God, who is justice itself, in whom I trust in the maintenance and prosecution of mine and the kingdom's right : nor do I trust in foreigners, nor will ever seek their aid, unless, which God forbid ! I shall be compelled to it by some unexpected and immutable necessity. And I know full well that the king can bring seven to my one ; and truly, I believe in the way that he is in, he will soon bring more into the realm, than he will be able to get out again." And after he had answered many other arguments, as he might confide in the king and his counsellors, and had reckoned up many instances, of the court's treachery and breach of their oaths about *Magna Charta*, and in several other cases, he says, " Neither would it be for the king's honour, that I should consent to his will, which were not supported by reason ; nay, therein I should do an injury both to himself and to that justice which he ought to maintain and exercise towards his sub-



jects: and I should give a bad example to all men of deserting justice and the prosecution of right, for the sake of an erroneous will, against all justice, and to the injury of the subject; for hereby it would appear that we had more love for our worldly possessions, than for righteousness itself." But I wrong the discourse, by singling any particulars out of it.

The king kept his Christmas at Gloucester with a very thin court, the late rout at Grosmund-castle having scattered them. And the morrow after, John of Monmouth, a nobleman, one of the king's warriors in Wales, attempting to surprize the marshal, was entirely defeated with the loss of a great number of Poitovins and others, himself narrowly escaping; which his estate did not, for the marshal immediately burned and destroyed it. The same did the other exiled lords by all the king's counsellors in those parts; for they had laid down, amongst themselves, this laudable and general rule, "That they would hurt no body, nor do them any damage, but only the evil counsellors of the king, by whom they had been driven into banishment, and used in the same kind." And a week after Twelfside the marshal and Leoline entered the king's lands, and laid them waste as far as Shrewsbury, the king and bishop Peter being still at Gloucester; but not having strength to oppose them, they retired to Winchester. But the king's heart was so hardened against the marshal by the evil counsel that he made use of, that when the bishops admonished him to make peace with the marshal "Who fought for the cause of justice," he made answer, "That he never would make peace with him, unless he would acknowledge himself a traitor with a halter about his neck."

When the bishop of Winchester and the other evil counsellors of the king saw all their measures broken, and the Poitovins thus cut off by the marshal, despairing ever to overcome him by force of arms, they fell to plotting and laying a train for his life, which was by a letter sent into Ireland to this effect: "Whereas Richard, late marshal of the King of England, for his manifest treason, was, by judgment of the said king's court, banished the realm, and for ever outed of all the patrimony and possessions he had, and yet remains in rebellion

these are therefore to require you, that if he should chance to come into Ireland, you take care to seize him and bring him to the king dead or alive; and, for your care herein, the king grants all the inheritance of all the late marshal's lands and possessions in Ireland, which are now fallen to his disposal, to be shared amongst you. And for this promise of the king to be made good to you, we all by whose counsel the king and kingdom are governed do make ourselves sureties, provided you fail not in the premises." This writing was directed to Maurice Fitzgerald, the king's justiciary in Ireland, and several other great men, and some that were liegemen to the marshal, but faithless:—and after this writing of unheard-of treason was framed, though the king knew nothing of the contents of it, yet they compelled him to put his seal; and they, to the number of eleven, put to their seals, and so sent it over.

This wrought with the Irish great men according to the wish of the evil counsellors, for out of covetousness, they immediately entered into the conspiracy, and privately sent word back, "That if the king's promise were confirmed to them under the great seal, they would do their utmost to effect the business." Whereupon, the said counsellors with a treasonable violence, surreptitiously got the great seal from the bishop of Chichester, who did not consent to this fraud, and so sent a charter, wherein every particular man's share is expressed under the great seal. As soon as this damnable writing arrived in Ireland, the conspirators took an oath to accomplish the thing; and in order to it raised an army, wherewith they invaded his lands, and took some of his castles, that by these injuries they might provoke him, and draw him into Ireland.

While this Irish plot went on, at Candlemas the king held a parliament at Westminster, where he grievously accused several of the bishops, and chiefly Alexander of Chester, for holding correspondence with the marshal, and for endeavouring to depose him from the throne of the kingdom. The said bishop, to clear himself and the rest of the bishops, immediately excommunicated all those who had any such wicked thoughts against the king; and all those who slandered the bishops in that sort, who were



wholly solicitous for the king's honour and safety. Afterward in this parliament, Edmund, elect of Canterbury, and the rest of the bishops, came to the king, condoling the desolation both of him and the kingdom; and as it were with one heart, and mind, and mouth, said: "Our lord the king, we tell you in the name of God, as your liegemen, that the counsel you now have and use, is neither sound nor secure, but cruel and perilous both to you and the realm of England; we mean the counsel of Peter bishop of Winchester, Peter Rivallis, and their accomplices: First, because they hate and despise the English nation, calling them traitors, and causing them all to be so termed, thereby turning away your heart from the love of your nation, and our hearts and the hearts of the nation from you; as appears by the marshal, than whom there is not a better man in your land, whom, by dispersing their lyes on both sides, they have perverted and alienated from you. And by the same counsel as their's is, your father John first lost the hearts of his country, and afterwards Normandy, and other lands; exhausted his treasure, and almost lost England, and never afterwards had peace. By the same counsel several disasters have happened to yourself;" which they there enumerate. They likewise tell him, by the faith in which they were bound to him, that his counsel was not for peace, but for breach of peace, and disturbance of the land; that his counsellors might grow rich by the troubles of the nation and the disherison of others, which in peace they could not compass. Amongst the items of their present grievances, which it would be too long here to recite, this is one, "That these counsellors confound and pervert "the law of the land," which has been sworn and corroborated by excommunication; so that it is very much to be feared that they stand excommunicated, and you for intercommuning with them." And they conclude, "these things we faithfully tell you, and before God we desire, advise and admonish you, that you remove this counsel from you; and as the custom is in other realms, that you manage your kingdom by your own faithful sworn subjects, that are of your own kingdom. For we assure you, that unless you speedily redress and reform these grievances, we will proceed to excommunication, both against

you and all other gainsayers, staying no longer than for the consecration of the archbishop elect." And when they had thus said, the king humbly demanded a short truce, saying, that he could not so suddenly remove his council, till he had audited an account of his treasure committed to them. And so the parliament broke up, with a confidence that peace and agreement would be had in a short time.

The ninth of April there came to parliament at Westminster the king with the earls and barons, and the archbishop lately consecrated, with his suffragans, that they might make some wholesome provision for the realm, which was still in disorder. The archbishop, taking to him the bishops and the other prelates, went to the king, and laid before him the bad state and imminent danger of the kingdom, and rehearsed all the grievances which they had mentioned in the last parliament; and told him plainly, that unless he would speedily rectify his error, and make peaceable agreement with his loyal subjects, he and all the prelates there would forthwith excommunicate both the king himself, and all that should contradict this peace and agreement. But the pious king hearing the advice of his prelates, lowly answered, "That he would be governed by their counsels in all things:" so that in few days after seeing his error, and repenting of it, he dismissed Peter of Winchester and Rivallis; and expelling all the Poitovins from his court and castles, he sent them into their own country, charging them "never to see his face any more." And afterwards being very desirous of peace, sent Edmund the archbishop, with the bishops of Chester and Rochester, into Wales, to Leoline and the marshal, to treat of peace.

With Leoline they might treat, but the earl marshal was gone into Ireland, as it had been before projected by the evil counsellors, to take care of his castles and possessions, which he heard were seized and spoiled: where as soon as he arrived, he was waited upon by Geoffrey Marsh his liegeman, a perfidious old man, who was one of those to whom the letter was directed, and was a sharer in the lands which were granted by charter. But having been an old servant to his father, and pretending an extraordinary honour and affection for the marshal, he thereby had that power with him, as to lead him into all the



shares and traps which were laid for him, and which at last cost him his life, though he sold it very dear. The story is too long for this place, but he fell a noble sacrifice for the English liberties, though neither the first nor the last in that kind.

After Easter the king being willing to meet his archbishop and bishops, whom he had sent into Wales, was going to Gloucester, and lay at his manor of Woodstock, where messengers came to him out of Ireland with an account of the death of the earl marshal. Whereupon the king, breaking forth into weeping and lamentation, to the admiration of all that were present, made sad moan for the death of so brave a knight, constantly affirming that he had not left his peer in the kingdom. And immediately calling for the priests of his chapel, caused an obsequy to be solemnly sung for his soul, and on the morrow after mass bestowed large alms upon the poor. Blessed therefore is such a king, who knows how to love those that offend him, and merit with prayers and tears forgiveness of his faithful subjects, whom upon false suggestions he had some time hated. When he came to Gloucester, Edmund and the other bishops met him, and told him that Leoline insisted upon it, as a preliminary of the peace, that the banished barons should be restored. Upon this he summons them to a parliament at Gloucester, to which they came under the safe conduct of the bishops, and were restored to all their rights. Afterwards Edmund caused a copy of the letter, concerning the treachery prepared for the earl marshal, to be read in full parliament, at which the king and the whole assembly wept. And the king confessed in truth, that being compelled by the bishop of Winchester and his other counsellors, he had commanded his seal to be put to some letters that were presented to him; but he affirmed with an oath, "That he never heard the contents of them." To whom the archbishop said, "King, search your conscience; for all those that procured these letters to be sent, or were privy to them, are as guilty of the marshal's death, as if they had killed him with their own hands." Then the king taking advice, summoned his ministers to answer for his treasure, and the ill use of his seal when he knew nothing of it; upon which some took

sanctuary, others absconded, and some fled to Rome. Rivalis and Segrave were afterwards tried in the king's bench, where the king himself sitting with the judges, charged them with the particulars of their evil counsel, "and called them wicked traitors;" and they were deeply fined. And yet the next year these two were received into grace and favour again, after he had removed many of his new counsellors and officers, to the admiration of his people, and had demanded the great seal from the bishop of Chester his chancellor with a great deal of reproof, though he had unblameably administered his office, and was a singular pillar of truth in the court. But the chancellor refused it, saying, "That having received the seal by the common council of the realm, he could not resign it to any one without the like common assent."

The miseries of the kingdom still go on, and no other can be expected from such a property of a prince, who set his seal to destroy his best subjects blindfold, and say his wicked counsellors compelled him to it; and after he himself has impeached them, and publicly blackened them with his own mouth, "and threatened to have their eyes pulled out," takes them again into his bosom. And therefore in all the succeeding parliaments, we meet with nothing but their repeated complaints of the violations of Magna Charta, and their ineffectual endeavours to redress them; feigned humiliations and sorrow on the king's side, with promises of amendment, but no performance; asking for money, and then being upbraided with what he had already, and that at several times he had wasted eight hundred thousand pounds, since he began to be a dilapidator and consumer of the kingdom: they gave him money once for all, and he gives them a charter never to injure them any more in that kind, by requiring any more aids: and such like transactions as these, till we come to Ann. Dom. 1244. when again he wants money. And then upon these following considerations, that because the charter of liberties, which the king had long since granted, and for the observation whereof Edmund the archbishop had sworn and most faithfully passed his word on the king's behalf, had not hitherto been kept: and because the aids which had been granted to the king, had turned to no profit of the king or kingdom: and because



of other grievances which the king promises to redress, the parliament came to this resolution, "That there should be a prorogation of three weeks, and that if in the mean time the king should freely chuse himself such counsellors, and order the rights of the kingdom as should be to their content, they would then give him an answer about the aid." In these three weeks the lords drew up a provision by the king's consent, to this effect: "Concerning the liberties at another time bought, granted and confirmed, that for the time to come they be observed. For the greater security whereof, let a new charter be made, which shall make special mention of these things. Let those be solemnly excommunicated by all the prelates, who wittingly oppose or hinder the observation of these liberties: and let all those have reparation made them, who have suffered in their liberties since the last grant. And because neither by virtue of an oath then taken, nor for fear of the holy man Edmund's excommunication, what was then promised has hitherto been kept, to avoid the like peril for the future, lest the latter end be worse than the beginning; let four nobles and powerful men of the discreetest in the realm, be chosen by assent of parliament to be of the king's council, and to be sworn, that they will order the affairs of the king and kingdom faithfully, and do justice to all without respect of persons. These shall follow our lord the king, and if not all, two at least shall be present to hear all complaints that come, and to give speedy relief to those that suffer wrong; they shall supervise the king's treasure, that the money given for public uses be so applied. And they shall be conservators of the liberties. And because the chancellor and justiciary are to be frequently with the king, they being chosen in parliament may be two of the conservators. And as they are chosen by the common assent, so they shall not be removed without the same, &c."

And when (says Matt. Paris) the great men in the recesses of three weeks had diligently treated of these matters, which were so exceedingly profitable for the commonwealth; the enemy of mankind, the disturber of peace, and the raiser of division, the devil, through the pope's avarice, unhappily put a stop to the whole business. For in this nick of time, comes a legate to raise money, with

new and unheard-of powers: and this put all into confusion, and made work for a long time after.

Four years after this, A. D. 1248. a parliament meets the se'nnight after Candlemas at London, that they may treat diligently and effectually with our lord the king, of the affairs of the realm, which is very much disordered and impoverished, and enormously maimed in our days. The parliament, understanding that the king intended to ask an aid of money, told him that he ought to be ashamed to demand such a thing, especially seeing that in the last exaction of that kind, to which the nobles of England consented with much difficulty, he gave them a charter that he would never burden nor injure them with the like again. He was likewise grievously reprehended, and no wonder, for calling in aliens, and foolishly squandering the wealth of the kingdom upon them; marrying them to his wards without their consent, and several other of his spendthrift and tyrannous practices. And, one and all, they grievously reproached him, for not having (as the magnificent kings his predecessors had) a justiciary, chancellor and treasurer, by the common council of the realm, and as is fit and expedient, but such as follow his will, let it be what it will, so long as it is for their own gain: and who do not seek the good of the commonwealth, but their own particular profit, by gather-money, and getting the wards and revenues to themselves in the first place.

When our lord the king heard this, being confounded within himself, he blushed, knowing that all of these things were very true. He therefore promised most faithfully, that he would readily redress all these things; hoping by this humility, though it were feigned, to incline all their hearts to grant him an aid. To whom the whole parliament, which had been often answered with such promises, upon advice made answer, "That it would soon be seen whether the king will reform these things or no, and will manifestly appear in a short time. We will wait a while with patience; and as the king shall carry and behave himself toward us, so shall he have us obedient to him in all things." Therefore, all was adjourned, and respited for a fortnight after midsummer. But in the meantime, our lord the king, whether it proceeded from his



own spirit, or that of his courtiers, who were unwilling to lose any thing of their power, was hardened and more exasperated, and never minded to make the least reparation of these abuses according to his promise.

When the day appointed came, the parliament came again to London, with a full belief and trust in the king's firm promise, that, leaving his former errors, by the grace of God bestowed upon him, he would incline to more wholesome advice. As soon as they were assembled, there came this unhandsome answer from the king: "All you the principal men of England, you had a mind to bring the lord your king, to the bent of your uncivil will and pleasure, and to impose a very servile condition upon him; that what every one of you may do at pleasure, should impudently be denied to him; for it is lawful for every body to use whose and what counsel he will. And so it is lawful for every master of a family to prefer any one of his house to this or that office, or put him by it, or turn him out, which you rashly presume to deny even to your lord the king. And this presumption is still the greater, seeing servants ought by no means to judge their master, nor tie him to their conditions, nor vassals to do the like to their prince; but all inferiors whatsoever, are to be ordered and directed by the will and pleasure of the lord and master: for the servant is not above his lord, as neither the disciple above his master; and truly he should not be your king, but may pass for your servant, if he should be thus brought to your will. Wherefore, neither will he remove, nor chancellor, nor justice, nor treasurer, as you have propounded to order the matter; neither will he put any other in their room." After the same fashion, says Matt. Paris, there was a cavilling answer to the other wholesome articles which were sufficiently for the king's interest. "But he asks of you an aid of money to enable him to recover his rights in the parts beyond the seas, wherein you yourselves are alike concerned." When therefore the parliament had heard this, they understood clearer than the light that all this came from his present counsellors, whose reign would be at an end, and be blown away with a puff, if the baronage of all England might be heard. But seeing themselves craftily answered and op-

posed, they all replied, as if it had been perfectly with one breath, "That they would by no means uselessly impoverish themselves, that aliens might be proud at their cost, and to strengthen the enemies of the king and kingdom:" of which they gave instances in what happened lately in Poitou and Gascony; where the king upon an expedition out of his own head, and against their advice, lost honour, treasure, lands, and wholly miscarried. And so the parliament broke up in the utmost indignation, every one being disappointed in the great hopes which they long had from this parliament: and they carried on nothing, but as they used to do, contemptuous usage, with lost labour and expences.

The grievances still increase, till we come to a new confirmation of Magna Charta, A. D. 1253, which was upon this occasion. The pope, for ends of his own, solicited the king to undertake an expedition to the Holy Land, and for his encouragement, granted him the tenths of the revenues of England for three years. Upon this, in a very public and solemn manner, he took upon him the cross; but some said that he only wore that badge upon his shoulders as a good argument to get money. And he swore. "That after midsummer, he would begin his journey for the following three years, unless he were hindered by death, sickness, or some other reasonable impediment." This oath he took both after the fashion of a priest with his hand upon his breast, and after the manner of a layman, laying his right hand upon the book and kissing it; and yet, says the historian, the standers by were never the surer.

But though the king afterwards produced the pope's mandate, wherein by the power given him of God, he granted the king his tenth, yet the bishops opposed it as an unsufferable usurpation; which put the king into the most frantic and impotent rage that ever was described: and though afterwards he closeted them yet he could not prevail. At last, about easter, a parliament was called. After fifteen days debate, the consent of the whole parliament settled in these resolves, "That they would not hinder the king's pious intention of going to the Holy Land; nor at the same time should the church and kingdom suffer damage." They therefore granted



the king the tenth of all church-revenues for three years, and three marks escuage upon every knight's fee for that year. And the king on his part, promised, that in good faith, and without any quirks and caviling pretences, he would faithfully observe Magna Charta, and every article of it. Though it was no more than his father King John had sworn to keep many years ago, and in like manner the present king at his coronation, and many a time after, whereby he choused the nation of an infinite deal of money.

Accordingly, May the third, in the great hall at Westminster, in the presence and with the consent of the king and the whole parliament, the archbishop and the bishops in their pontificals with lighted candles, passed the sentence of excommunication against all that should violate the liberties of the church, and the liberties or free customs of the realm of England; and those especially which are contained in the charter of common liberties of the realm of England, and of the Forest. And the charter of King John was accordingly rehearsed and confirmed. The form of the excommunication is somewhat large, as being strongly drawn up, and the anathemas well laid on; it is in Bacon, p. 131. And all the while the sentence was reading, the king laid his hand spread upon his breast, chusing to assist with that ceremony, and not with—holding a wax-candle, to shew, as he said, “That his heart went along with it;” and when it was ended, he said these words, “So help me God I will faithfully keep all these things inviolate, as I am a man, as I am a Christian, as I am a knight, and as I am a king crowned and anointed.”

Daniel and Bacon are wonderfully taken with the manner of this confirmation of the charters; and say, that there was never such a solemn sanction of laws, “since the law was delivered at mount Sinai.” But the renowned Robert Grossthead, bishop of Lincoln, divining and foreboding in his heart that the king would fly off from his covenants, immediately, as soon as he got down into his bishopric, caused all the breakers of the charters, and especially all the priests that were so, to be solemnly excommunicated in every parish church throughout his diocese, which are so many as can hardly be numbered; and

the sentence was such as was enough to make the ears of those that heard it to tingle, and to quail their hearts not a little.

The parliament being thus ended, the king presently uses the worst counsel that could be, and resolves to overthrow all that had been thus established: for it was told him, that he should not be king, at least *lord in* England, if the said charters were kept; and his father John had experience of it, and chose rather to die than thus to be trampled under foot by his subjects. And these whisperers of Satan added moreover, "Take no care though you incur this sentence of excommunication; for a hundred, or for a brace of hundred pounds the pope will absolve you: who, out of the plenitude of his power, what he pleases can either loose or bind: for the greater cannot command a greater than he. You will have your tenth to a farthing, which will amount to very many thousand marks: and what lessening will it be of that inestimable sum, to give the pope a small driblet, who can absolve you though he himself had confirmed the sentence, seeing it belongs to him to annul, who can enact; nay, for a small gratuity will enlarge the term of years for the grant of the tenth, and will throw you in a year or two?" Which accordingly afterwards came to pass, as the following narration shall declare. Here is a lost king and a lost nation: Why should we read an farther?

Two years after, having spent most of that time in the wars in Gascony, for to the Holy Land he never went, he calls a parliament at London upon hoke day, which was the fullest assembly that ever was there seen. In short, the king wants money, was in debt, and would have the aid from the baronies to be continued in proportion to the tenths, and so, compleating their tax, he might be bound to give them his thanks in full. This would have amounted to such a sum as would have impoverished the realm, and made it defenceless, and exposed it to foreigners. Upon consultation therefore, because that proposal was impossible, they came to this concession. "That they would charge and burden themselves much, for to have Magna Charta to be honestly kept, from that time forth hereafter, without pettifogging quirks, which he had so often promised, and sworn and



bound himself to it, under the strictest ties that could be laid upon his soul. They demanded, moreover, to chuse them a justiciary, chancellor, and treasurer, by the common council of the realm, as was the custom from ancient times, and was just; who likewise should not be removed but for manifest faults, and by the common council and deliberation of the realm called together in parliament. For now there were so many kings in England, that the ancient heptarchy seemed to be revived." You might have seen grief in the people's countenances. For neither the prelates nor the nobles knew how to hold fast their Proteus, I mean their king, although he should have granted them all this. Because in every thing he transgresses the bounds of truth; and where there is no truth, no certainty can be had. It was told them likewise by the gentlemen of the bed-chamber, who were most intimate with the king, that he would by no means grant them their desire about the justiciary, chancellor, and treasurer. Moreover, their prelates were bloodily grieved about their tenth, which they promised conditionally, and now were forced to pay absolutely, the church being used like a servant maid. The nobles were wounded with the exaction which hung over their heads, and were bewildered.

At last they all agreed to send a message to the king in the name of the whole parliament, that the business should be deferred till Michaelmas, "That, in the mean time they might have trial of the king's fidelity and benignity, that he proving thus perhaps towards them and their patience in the keeping the charter so many times promised, and so many times bought out, might turn again and deservedly incline their hearts towards him: and they, as far as their power would extend, would obediently give him a supply." Which, when the king did not like, and by giving no answer did not agree to it, the parliament after many fruitless debates, day after day, from morning till night, thus broke up; and the nobles of England now made ignoble, went home (then the parliament did not live at court in those days) in the greatest desolation and despair.

In the same year arrived Alienor, the King of Spain's sister, whom prince Edward had married. with such a retinue of Spaniards, as looked like an invasion, who, with

great pomp, and all sorts of public rejoicings, were received at London; though with the scorn and laughter of the common people at their pride. But grave persons and men of circumspection, pondering the circumstances of things, fetched deep sighs from the bottom of their hearts, to see all strangers so much in request, and the subjects of the realm reputed as vile, which they took for a token of their irreparable ruin. At the same time there was the worst news that could be of a legate *a latere* coming over, armed with legantine power, who was ready prepared in all things to second the king in the destruction of the people of England, and to noose all gainfayers and opposers of the royal will, which is a tyrannical one, and to hamper them all in the bonds of an anathema. Moreover it terrified both the prelates and nobles, and sunk them into a bottomless pit of desperation, to see that the king, by such unspeakable craftiness, had brought in so many foreigners, dropping in one after another; and by degrees, had drawn into confederacy with him many, and almost all the principal men in England, as the earls of Gloucester, Warren, Lincoln, and Devonshire, and very many other noblemen; and had so impoverished the natural born subjects, to enrich his foreign kindred and relations, that in case the body of the realm should have thoughts of standing for their right, and the king were against them, they would have no power to restrain the king and his foreigners, or be able to contradict them. As for earl Richard, who is reckoned our greatest nobleman, he stood neutral. In like manner there were others not daring to mutter or speak within their teeth. The archbishop of Canterbury, who ought to be like a shield against the assaults of the enemy, was engaged in secular affairs beyond sea, taking little care of his flock in England. The magnanimous patriots and hearty lovers of the realm, namely, the archbishop of York, Robert Grossethead, bishop of Lincoln, Warin de Munchemsil, and many others, were dead and gone. In the meantime, the Poitovin kindred of the king with the provincials, and now the Spaniards and the Romans, are daily enriched with the revenues as fast as they arise, and are promoted to honours, while the English are repulled.

In this lamentable state was the nation again, within



two years after the so much magnified confirmation of their charter, which was indeed performed with the greatest solemnity possible; for heaven and earth were called to witness it. The year following, though England still lay under oppression, yet the Welch were resolved to bear the tyranny no longer, but stood up for their country and the maintenance of their laws, and baffled several armies, first of the prince and afterwards of the King. They were ten thousand horse, and many more foot; who, entering into a mutual association, swore upon the gospels, that they would manfully and faithfully fight to the death, for the liberties of their country and their ancient laws, and declared they had rather die with honour than spin out a wretched life in disgrace. At which manly action of their's, says the historian, "The English ought deservedly to blush, who lay down their neck to every one that sets his foot upon it, and truckle under strangers, as if they were a sorry, diminutive, timorous, little people, and a raff of scoundrels."

It is very hard that the English nation must, at the same time, suffer by the Welch in their excursions upon our borders, and withal, be continually persecuted by this historian, and upbraided with the Welch valour. But so it is, that he cannot mention any English grievance, but he twits us with the Welch. Baldwin of Rivers, by the procurement of our lady the Queen marries a certain foreigner, a Savoyard, of the Queens' kindred. Now to this Baldwin belongs the county of Devon; and so day by day the noble possessions of the English are devolved upon foreigners, "Which the faint-hearted English either will not know, or dissemble their knowledge, whose cowardice and supine simplicity is reproved by the Welch stoutness."

In the next passage, we have an account of the King's coming to St. Alban's in the beginning of March, and staying there a week; where, all the while this historian was continually with him at his table, in his palace, and bed-chamber; "at which time he very diligently and friendly directed this writer's pen:" so that it is not to be expected we shall hear any more of the Welch. And yet the same summer, when they baffled the King's expedition against them, he rejoices "That their material busi-

ness prospered in their hands." For he says, that their cause seemed to be a just cause even to their enemies. And that which heartened them most was this, that they were resolutely fighting for their ancient laws and liberties; like the Trojans from whom they were descended, and with an original constancy. "Woe to the wretched English, that are trampled upon by every foreigner, and suffer their ancient liberties of the realm to be puffed out and extinguished, and are not ashamed of this, when they are taught better by the example of the Welch. O England! thou art justly reputed the bondwoman of other countries, and beneath them all: what thy natives earn hardly, aliens snatch away and carry off!"

It is impossible for an honest man ever to hate his country; but if it will suffer itself to be oppressed, it justly becomes, at once both the pity and scorn of every understanding man; and of them chiefly that love it best. But as we cannot hate our country, so for the same reason we cannot but hate such a generation of men, as for their own little ends are willing to enslave it to all posterity; wherein, they are worse than Esau, for he only sold his own birth-right for a mess of pottage, but not that of other folks too.

In the year 1258, a parliament was called to London the day after Hoke Tuesday, for great and weighty affairs; for the king had engaged and entangled himself in great and amazing debts to the pope about the king of Apulia, and he was likewise sick of his Welch war. But when the king was very urgent for an aid of money, the parliament resolutely and unanimously answered him, "That they neither would nor could bear such extortions any longer." Hereupon he betakes himself to his shifts to draw in the rich abbies to be bound for him for sums of money; but though it was well managed, he failed in it. And that parliament was proloaged and spent in altercations between the king and the great men, till the week after Ascension-day: for the complaints against the king were so multiplied daily, and the grievances were so many, by the breach of Magna Charta, and the insolence of the foreigners, that Matt. Paris says it would require special treatises to reckon up the king's miscarriages. And the king being reproved for them, and con-



vinced of the justness of the reproof, bethought and humbled himself, though it were late first, and said, " That he had been too often bewitched by wicked counsel;" but he promised, which he likewise confirmed by an oath taken upon the altar and shrine of St. Edward, " That he would plainly and punctually correct his former errors, and graciously comply with his natural born subjects." But his former frequent breach of oath rendered him incredible, and neither fit to be believed nor trusted. And because the great men knew not as yet how to hold fast their Proteus, which was a hard and difficult matter to do, the parliament was put off to Barnabas-day, to be held without fail at Oxford. In the mean time, the chief men of England, namely, the earls of Gloucester Leicester, and Hereford, the earl marshal, and other eminent men, out of a provident precaution for themselves, associated: and because they were vehemently afraid of the treachery of the foreigners, and much suspected the little plots of the king, they came armed with a good retinue to Oxford.

There the great men, in the very beginning of the parliament, confirmed their former purpose, and immutable resolution to have the charter of the liberties of England faithfully kept and observed, which the king had often granted and sworn, and had caused all the bishops of England to excommunicate, in a horrible manner, all the breakers of it; and he himself was one of the excommunicators. They demanded likewise to have a justiciary that should do equal justice, and some other public things, which were for the common profit of the king and realm, and tended to the peace and honour of them both. And they frequently, and urgently asked and advised the king to follow their counsels, and the necessary provisions they had drawn up; swearing with pledging their faiths, and giving one another their hands, " That they would not cease to pursue what they had propounded, for the loss either of money or lands, or for the life or death of themselves or their's." Which, when the king understood, he solemnly swore, " That he would comply with their counsels, and agree to them." And prince Edward took the same oath. But John earl of Warren, was refractory, and refused it, and the king's

half brothers, William of Valence, and others. Then the sea-ports were ordered to be strictly guarded, and the gates of London to be close kept at nights, for fear the foreigners should surprise it. And when they had spent some days in deliberating what was to be done in so weighty an affair, as repairing the state of a broken, shattered kingdom was, they confirmed their purpose with renewing their covenants and oaths, "That neither for death, nor life, nor freehold, for hatred or affection, or any other way, they would be biased or slackened from purging the realm, of which they and their progenitors before them were the native offspring, and clearing it of an alien-born brood, nor from the procuring and obtaining good and commendable laws: and if any man, whoever he be, should be refractory, and oppose this, they would compel him to join with them whether he would or no." And though the king and prince Edward had both sworn before, yet prince Edward, as he could, refused this oath, and so did John, earl of Warren. But Henry, son to Richard, king of the Romans, was doubtful and unresolved; saying, "That he could not take such an oath, unless it were with his father's leave and advice." To whom the barons publicly made answer, "That if his father himself would not agree to it, he should not hold one furrow of land in England." The king's half brothers were very positive, and swore bloodily that they would never part with any of the castles, revenues, and wards, which their brother had freely given them as long as they breathed. But while they were asserting this, and multiplying oaths not fit to be rehearsed, the earl of Leicester made answer to William de Valence, who was more swollen and haughty than the rest; "Know for certain, that either you shall give up the castles which you have from the king, or you shall lose your head." And the other earls and barons firmly attested the same. The Poitovins therefore, were in a great fright, not knowing what to do: for if they should retire to some castle, wanting provisions, they would soon be starved out: "For the body of the common people of the realm, without the nobles, would besiege them, and utterly raze their castles." Whereupon, at dinner-time they stole away, as if it had been to go to dinner, and



took their flight to Winchester. When the great men were advertised, that the Poitovins had thus taken their flight towards the sea-side, fearing, lest they might be gone to bring in foreign aid, (I suppose they had not forgot how K. John served his barons) they thought all delays dangerous in such a matter, and therefore immediately mustered all their force to look after them.

The barons on the 15th of July dismissed the Poitovins, and commended them to the seas in their passage to France, where they met with sorry welcome, but at last were sent home with a safe conduct. But the barons took care to send them from hence as bare as they came; for Richard Gray, governor of Dover, by their order, seized all their money, and it was appointed to be laid out for the public uses of the realm. On the 20th of the same month, came commissioners of the parliament to London, and convened all the citizens, otherwise called barons, of the whole city; and in the hall which is called Guildhall, they asked them if they would faithfully obey the statutes of the parliament, and immutably adhere to them, manfully resisting all opposers, and effectually aiding the parliament? Which, when they had all of them freely granted, they gave the commissioners a charter of this their grant, sealed with the common seal of the city. But they did not as yet make public proclamation of these statutes, because they were in confusion about the earl of Gloucester's being poisoned, and his brother, (as were several others) which, as appeared afterwards, was the Poitovin's farewell.

And then, in this solicitous and weighty affair, and in this most happy renovation and right ordering of the whole realm, Fulk, bishop of London, was more lukewarm and remiss than became him, or was expedient; whereby he so much the more smutted and blackened his fame, by how much he had formerly been more generous than others. And so the barons having reposed their hopes in his breast, he provoked many of them to anger by his falling off, when by this means they believed they should set the king right with his people. But that which frightened them beyond all things was, the king's mutability and unfearcheable doubleness, which they perceived by a terrible word he let fall. Being one day upon the

Thames in his barge, a sudden storm of thunder and lightning arose, which he dreaded above all things; and therefore immediately ordered to be set on shore, which happened to be at Durham-house, where the earl of Leicester then lay: which, when the earl understood, he ran joyfully to meet him, and reverently saluted him, according to his duty; and cheering him, said, "You have no occasion to be concerned at the tempest, for now it is over." To whom the king replied in the greatest earnest, and with a stern countenance, "I am indeed afraid of thunder lightning above measure; but," with a horrid oath, "I dread thee more than all the thunder and lightning in the world." To which the earl gave a mild and gentle answer, and only let him know he had a wrong opinion of him. But all men did suspect this amazing expression proceeded from hence, that the earl had been a main man in establishing the provisions at Oxford.

This boded ill to those provisions, and, accordingly in a short time, the king sent privately to the pope, to be absolved from his oath, whereby he was bound to keep them: which he easily obtained, not only for himself, but for all that had taken it, whereby all those who could any way corrupt, were free to be of his party.

The next year the king kept his Christmas at the tower with the queen; and being, by the instigation and wicked counsel of some about him, rendered wholly averse to the covenant which he had made with his parliament, he contrived how to publish his aversion and indignation against it. In order to which, he kept his residence in the tower; "And having broken open the locks to come at the treasure, which was deposited there *ab antiquo*," [which I suppose was some ancient heirloom or public stock of the kingdom, kept there as a reserve against some great emergency; for it is plain he had not the keys of it] "he brought it out to spend." After this, he hires work men to repair and fortify the tower, and orders the city of London to be put in a posture of defence, and all the inhabitants of it from twelve years old and upwards, swear fidelity to him; and the common crier made proclamation, "That whoever was willing to serve the king, should come away cheerily, and enter into his pay." And then he took his time to publish the



pope's bull of absolution from the oath, which was done at the Paul s-cross sermon.

Upon notice of these things, there was a great confluence of the barons from all parts, with a great strength of armed men, who came and lay in the suburbs; for they were not suffered to come within the city. But from thence the barons sent messengers to the king, and humbly besought him, " That he would inviolably keep the common oath which all of them had taken; and if any thing displeased him, that he would shew it to them, that they might amend it." But, he by no means consenting to what they offered, answered harshly and threateningly, " That because they had failed in their agreement, he would comply with them no more, but that, from henceforth, every one should prepare for his own defence." At length by the mediation of some persons, the business was brought to this issue, That the king should chuse one person, and the barons another; which two should chuse a third, who having heard the complaints on both sides, should establish a lasting peace and agreement betwixt them. But this treaty was allowed to be put off till the return of prince Edward, who was then beyond sea.

The prince hearing this, made haste home, that the peace might not be delayed by his absence; who, when he came, and found what vain counsels the king had taken, was very angry, and absented himself from his father's presence, adhering to the barons in this behalf, as he had sworn: and they entered into a confederacy with one another, " That they would seize the king's evil counsellors, and their abettors, and to the utmost of their power remove them from the king." Which, when the king understood he betook himself, with his counsellors, into the tower, his son and the great men abiding still without.

The next Christmas we find him still in the tower, with the queen and his counsellors, that were neither profitable to him, nor faithful. Which counsellors fearing to be assaulted, got a guard, and kept close in the tower. At length, by the queen's means, with much ado, some of the great men were reconciled, and made friends with them. When this was done, the king ventured himself out of the tower, leaving the command of it to John

Mansel (his principal counsellor, and the richest clergyman in the world) and went down to Dover, where he entered the castle, which was neither offered him nor denied him. And there the king found how he had been imposed upon, when he saw a castle so carefully guarded by a guard of the barons, lie open to him. When he went away, he committed the charge of that castle to E. de Waleran. He went likewise to Rochester castle, and several others, and found ingress and egress at his pleasure. It is plain they only kept them for the king.

At that time the king thinking himself secure, resolved openly to depart from his oath, of which the pope had given to him a release. He went, therefore round about to several cities and castles, resolving to take them and the whole kingdom into his hands, being encouraged and animated thereto, because the king of France, together with his great men, had lately promised to assist him with a great force. Coming, therefore, to Winchester, he turned his justiciary and chancellor, that were lately instituted by the parliament, out of their offices, and created *bene placito* new ones. Which, when the barons heard, they hastened with a great power towards Winchester; of which, John Mansel having timely notice, went privately down to the king, and sufficiently informed him of his danger and fetched him hastily back again to the tower of London.

There the king kept his next Christmas with the queen and his counsellors: at which time it was greatly laboured, both by the bishops of England and the prelates of France, to make peace betwixt the king and barons; and it came to this issue: That the king and the peers should submit themselves to the determination of the king of France, both as to the provisions of Oxford, and the spoils and damages which had been done on both sides.

Accordingly the king of France calls a parliament at Amiens, and there solemnly gives sentence for the king of England against the barons; "Whereby the statutes of Oxford, provisions, ordinances, and obligations, were wholly annulled, with this exception: that by that sentence he did in no wise intend to derogate at all from the ancient charter of John, king of England, which he granted to his parliament, or whole realm." Which re-



by exception compelled the earl of Leicester, and all that had their senses exercised, to continue in their resolution of holding firmly the statutes of Oxford: for they were founded upon that charter.

Presently after this, they all came home that had been present at the French parliament; the king of England, the queen, Boniface archbishop of Canterbury, Peter of Hereford, and John Mansel, who ceased not plotting and devising all the mischief they could against the barons. From that time things grew worse and worse; for many great men left the earl of Leicester and his righteous cause, and went off perjured. Henry, son to the king of the Romans, having received the honour of Tichel, which was given him by the prince, came to the earl, and said, "My lord earl, I cannot any longer be engaged against my father king of Germany, my uncle king of England, and my other relations; and therefore with your good leave and licence, I mean to depart, but I never will bear arms against you." To whom the earl cheerfully replied, "Lord Henry, I am not at all troubled about your arms, but for the inconstancy which I see in you: therefore pray go with your arms, and if you please, come back with your arms; for I fear them not." At that time Roger de Clyfford, Roger de Leibern, John de Vallibus, Hamon l' Estrange, and many others, being blinded with gifts, went off from their fidelity, which they had sworn to the barons for the common good.

If Matt. Paris had been alive, he would have told us a piece of his mind, concerning this false step of the barons, in putting their coat to arbitration, and submitting the English laws to the determination of an incompetent foreigner. But we lost his noble pen A. D. 1259. that is, about four years ago, presently after the establishment of the provisions at Oxford: so what has since followed, is taken out of the continuator of his history, who out of modesty has forborn to set his name as being unworthy, as he says, "To unloose the latchet of that venerable man's shoe." But we are told that it was William Rishanger, who succeeded Matt. Paris in the same employment, and prosecuted the history to the end of Henry III. I know not by what misfortune we have lost his

provisions of Oxford, which he says are written in his Addimenta : for certain it was by no neglect or omission of his, because he died with them upon his heart. For the last passage but one that he wrote, was the death of Fulk Basset bishop of London, (whom we saw above, he taxed formerly upon the same account) "Who," says he, "was a noble person and of great generosity ; and if he had not a little before staggered in their common provision, he had been the anchor and shield of the whole realm, and both their stay and defence." It seems his faltering in that main affair, was what Matthew could never forgive him alive nor dead. And indeed this could not but come unexpectedly from such a man, who had always been firm and honest to that degree, as to tell the king, when he arbitrarily threatened him for some incomppliance of his to turn him out of his bishoprick : "Sir," says he, "when you take away my mitre, I shall put on a head-piece."

And therefore, the annals of Burton, are a valuable piece of antiquity, because they have supplied the defect, and have given us both a Latin and French copy of those provisions. It would be too large, as well as beside my purpose, to set them down. In short, whereas by Magna Charta in King John's time, there were twenty five barons (whereof the lord mayor of London was one) appointed to be conservators of the contents of that charter, with all power to distress the king, in case of grievances, upon notice given, were not redressed within forty days : on the other hand in this provision of Oxford, which seems to be the easier, as much as prevention of grievances is better than the cure of them, there were twenty four of the greatest men in England ordained, twelve by the king himself, and twelve by the parliament, to be a standing council, without whose advice nothing was to be done. These were to have parliaments three times a year, where the barons might come, but the commons were excused to save charges. No wise man will say that this was the English constitution ; but these were necessary alterations by way of remedy, till they should be able to bring the government into the right channel again : for the provisions of Oxford were only provisional, like the interim in Germany, before the reformation ; and to



continue no longer than as so many scaffolds, till the ruins of the realm were repaired. Accordingly the utmost provision that I find was but for twelve years, as we have it in the oath of the governors of the king's castles, in the words below \*.

So that the barons of England were certainly in the right, when they said, that the provisions of Oxford were founded upon the Magna Charta which the French king and the parliament allowed; for every greater contains in it the less, and the power of the twenty-four counsellors at Oxford, as much as the power of coercion and punishing is above that of directing.

The French king and parliament were so far parties, that (as we saw before) they had promised the king a powerful assistance; which gave him encouragement so openly to break his oath, and undo what he had done; which certainly the barons did not then know, or else they would have been very far from submitting to their determination; especially when they could get nothing by it. For if it had proceeded in favour of them, they only had been where they were before, a foreign confirmation adding no authority to the English laws; and that determination that was made, only served to puzzle the cause, and to bring a war upon them which it must be, this unwise expedient was intended to prevent.

The first aggressor in this war was Roger Mortimer, who invaded and ravaged the lands of Simon Montfort; but he was soon even with him: the prince likewise took several castles; and Robert Ferrars, earl of Derby, who was of neither side, took that opportunity to seize and plunder the city of Worcester, and do a deal of mischief, for which he was afterwards sent prisoner to the Tower. The army of the barons easily retook what had been taken,

\* Ceo est le serment ke les gardens, d's chastels firent. Ke il les chastels le Rei leaument e en bone fei garderunt al oes le Rei et ses heyres E ke ens les rendrunt al Rei u a ses heyres et a nul autre, et par sun counseil et en nul autre manere; Ceo est a saver per prodes homes de la terre esluz a sun counseil, u par la greinure partie. E ceste furme par escrire dure deske a duz ans. E de ilokes eu avant per cest establement et cest serment ne sient constreint ke franchement ne les pussent rendre al Rei u a ses heirs. *Ann. Bar-*  
*ton, 413.*

by the barons, for he was the most special counsellor the king and queen had, ran away by stealth. The king likewise, fearing lest the barons' army should besiege him in the Tower, by the mediation of some that were afraid as well as he, yielded to an agreement with the barons, though it afterwards proved to be but short-lived; and promised to keep the provisions of Oxford: but the queen, tenant of the tower, fearing he should be severely handled and marched towards London, where John Mansel, lieutenant by a feminine malice, opposed it all she could. The form of this peace between the king, the earl and barons, was upon these conditions: "First, that Henry, son of the king of the Romans, (who was then the king's prisoner) should be released. Secondly, that all the king's castles throughout all England should be delivered up to the custody of the barons. Thirdly, that the provisions of Oxford be inviolably kept. Fourthly, That all foreigners by a set time should evacuate the kingdom, excepting those whose stay here should be allowed by common consent, as trusty to the realm. (Perhaps not a quarter of the number which we have in one naturalization act.) "That for the time to come the natives of England, who are faithful and profitable to the realm, may have the ordering of all affairs under the king."

These things being thus covenanted, in a little while after, pacts, promises, oaths, notwithstanding several knights on the king's part stored Windsor castle with a great quantity of provisions and arms, and they and the prince began a new war. This war lasted with great variety of strange successes on both sides for several years, till the earl of Leicester was overthrown and slain in the battle of Evesham. Upon which the historian says; "And thus ended his labours that great man Earl Simon, who spent, not only his, but himself in behalf of the oppressed, in asserting a just cause, and maintaining the rights of the realm. He undertook this cause, in which he fought to the death, by the advice, and at the instance of the blessed Robert Grossthead bishop of Lincoln, who constantly affirmed, that all that died for it were crowned with martyrdom."

After this deciding battle the prince followed his blow, by advising his father to call a parliament forthwith, before



his victory cooled ; which accordingly met at Winchester, September 8, whereas the fight was August 5, before. In this parliament they did what they would with the earl's broken and dispersed party : " The chief of them were imprisoned to be punished at the king's will ; the city of London disfranchised for their rebellion ; all that took part with earl Simon disinherited, whose lands the king presently bestowed upon those that had stuck faithfully by him, as a reward of their merit." Ottobon, the legate, also called a council at Northampton, and there excommunicated all the bishops and clergy that had aided and favoured earl Simon against the king ; namely, the bishops of Winchester, London, Worcester, and Chester : of whom the bishop of Worcester poorly died (*vilitè*) in a few days after this sentence ; but the other three went to Rome to make their peace with the pope. In short, he excommunicated all others whatsoever, that had been against the king.

The disinherited barons thought never the worse of their cause for this overthrow, but still continued in arms for three years after. And though they were forced to fly from place to place, and live as they could, yet they seemed to be the conquerors. For their answer to the legate's message to them in the isle of Ely, shews them to be men of great wisdom, integrity, and constancy ; and their demands likewise are like themselves. For they require the legate " to restore the council of the whole realm, which he had irreverently ejected out of the realm, the bishops of Winchester, London, and Chichester, men of great counsel and prudence, for want of whom the nation sunk. They require him to admonish the king to remove aliens from his council, by whom the land is held in captivity. That their lands may be restored them without redemption at seven years purchase, which was lately allowed them at Coventry. That the provisions of Oxford be kept. That hostages be delivered them into the isle of Ely, and they to hold that place peaceably for five years, while they shall see how the king performs his promises." And after this, they reckon up several grievances, as the collation of benefices upon strangers, which are for the livelihood and maintenance of natives only,

&c. All which they admonish the legate to see amended.

"Thus they treat," says Daniel, "not like men, whom their fortunes had laid upon the ground, but as if they had been still standing; so much wrought either the opinion of their cause, or the hope of their party. But this *stubbornness* so exasperates the king, as the next year following he prepares a mighty army, besets the isle so that he shuts them up; and prince Edward, with bridges made of boats, enters the same, to whom some of them yielded themselves, and the rest were dispersed by flight."

He needed not to have been at such a loss for a reason of these men's resolute behaviour, much less to have *miscalled it*, if he had needed the fourth article of their answer to the legate, which he has translated to loss. To the fourth they say, "That their first oath was for the profit of the realm, and the whole church; and all the prelates of the kingdom have passed the sentence of excommunication against all that contravene it; and being still of the same mind, they are ready prepared to die for the said oath. Wherefore they require the legate to recall his sentence of excommunication, otherwise they would appeal to the apostolic see, and even to a general council, or if need were, to the sovereign judge of all."

Now they that had this sense of their duty, and of the public good, though they were lost men in the eye of the world, could not chuse but stand upon their terms; neither could they abate one jot of a righteous cause, which was all they had left to support them. And that was enough; for he that is in the right, is always superior to him that is in the wrong.

The parliament at Winchester seems to have sat in hot blood, but that king's succeeding parliaments were far from suffering him to be absolute and arbitrary, "though there was never a rebel amongst them." For the parliament at Bury gave nothing but very smart denials to his and the legate's scurv'y petitions, *petitiones pessimas*, as they called them, which were contained in eight articles. The first was, "That the prelates and rectors of churches should grant him the tenths for three years to come, and for the year last past, so much as they gave the barons for guarding the sea against strangers." To this they gave answer,



" That the war began by unjust covetise, and is not yet over [the isle of Ely being not then reduced] and it were necessary to let alone such very bad petitions as these, and to treat of the peace of the realm, and to convert his parliament to the profit of church and kingdom, not to the extortion of pence, especially when the land is so far destroyed by the war, that it will be a long time if ever, before it recover." The seventh is in the pope's behalf, for the speedy preaching up of a crusado throughout all England. To this they made answer, " That the people of the land are in a great part, destroyed by the war; and if they should now engage in a crusado, few or none would be left for the defence of their country: whereby it is manifest, that the legate would have the natural progeny of the land into banishment, that strangers might the more easily conquer the land." Art. viii. Also it was said, " That the prelates were bound to agree to all these petitions *nolens volens*, because of their late oath at Coventry, where they swore they would aid our lord the king, all manner of ways they could possibly." To this they made answer, " That when they took that oath, they did not understand by it any other aid, but ghostly and wholesome advice." A very trim answer. And all the rest are much under the same fashion. And to conclude this whole reign, at his last parliament at Markburgh, Magna Charta was confirmed in all its points.

Thus have I brought down the history of Magna Charta to the end of Henry III. wherein you have a short, but punctual account of that affair, and the true face of things. For I have told the story with the same air the writer himself does, and have been so faithful in the relation, as to keep close to his very phrase; whereby, in several places, it is the worse English though the better history. As for the writer himself, he was the most able and sufficient, and the most competent that could be, writing upon the spot, and having all the advantages which, added to his own diligence, could give him true information. For he was historiographer royal to K. Henry III. and invited by him to the familiarity of dining, and being in frequent conference with him; was directed by him to record several matters, and to set them down in indelible characters, which, I believe, his will prove.

And as to his integrity, no man can suspect him, unless it be for being partial on the court side, as being in their pay: but his writings shew that he was above that mean consideration; and though he gives the king a cast of his office where he can, and relates things to his advantage, yet he has likewise done right to the barons, and was a faster friend to truth than to either of them. And accordingly in King Edward the first's claim to a superiority over the kingdom of Scotland, this very writing is brought as authentic history concerning what passed at York, 35 Henry III. and is cited by the name of *The Chronicle of St. Alban's*. In one thing he excells, which is owing to the largeness and freedom of his converse with persons of the first quality, that he not only records barely what was done, but what every body said upon all occasions, which (as Baronius says it is) makes it a golden book. For men's speeches give us great light into the meaning of their actions, which is the very inside of history.

In this history of Magna Charta, the history of the barons' wars was necessarily involved, so that in writing one must write both: for, as you see, they were wholly undertaken for recovering and maintaining the rights of the kingdom contained in that charter, and were in affirmation of it. Whereby they that have been told the barons' wars were a rebellion, may know better; and every honest man will find their cause to be so just, that if he had lived in those days he must have joined in it; for so we did lately in the fellow to it, at the last revolution. It is well indeed for us, that our ancestors lived before us, and with the expence of their blood recovered the English rights for us, and saved them out of the fire; otherwise we had been sealed up in bondage, and should have had neither any English rights to defend, nor their noble example to justify such a defence, but should have been in as profound an ignorance that ever there were any such rights, as the barons themselves were of Henry the first's charter. For in all the steps the barons took we followed them. Did they take arms for the security of their liberties? so did we. Did they withdraw their allegiance from an arbitrary and perjured king? so did we. Did they set another over his head, and proceed



to the creation of a new king? so did we. And if we had miscarried in our affair, we had not been called rebels, but treated as such: and the bishop of London and all our worthies had made but a blue business of it, without putting on the prince of Orange's livery. And therefore it is great ingratitude in those that receive any benefit or protection by this *happy revolution*, to blemish the cause of the barons, for it is the same they live by; and as for those that had a hand in it, to call the barons' cause *a rebellion*, is utterly unaccountable, and like men that are not of their own side.

Leaving therefore, the proper work of reproaching and reviling both these as damnable rebellions, to the people of the court, and the harder work of proving them so, I shall undertake the delightful task of doing service to this present rightful government, and at the same time of doing right to the memory of our ancient deliverers, to whom we owe all that distinguishes the kingdom of England from that of Ceylon. It had been wholly needless to have written one word upon this subject, if this affair had ever been set in a true light, as it lies in antiquity; or if our modern historians had not given a false turn to so much of the matter of fact as they have related, and ruined the text by the comment. Mr. Daniel has done this very remarkably; for after he has given us enough of this history to justify the barons' proceedings, and they had gained the establishment of Magna Charta, he begins his remarks upon it in these words: "And in this manner (though it were to be wished it had not been in this manner) were recovered the rights of the kingdom." Now, though if it had not been done in this manner, it had not been done at all; and though he allows it to be the recovery of their own, *the rights of the kingdom*, which one would think a very just and necessary work; yet this shrug of a wish leaves an impression upon his reader, as if the ways wherein they recovered them were unwarrantable. On the other side, King John would not allow them to be the rights of the kingdom at any rate, "But vain, superstitious, unreasonable demands; the barons might as well ask him his kingdom; and he swore he would never grant them such liberties as should make himself to be a slave." So that I have two things

to shew: First, That they were verily and indeed the kingdom's rights; and secondly, That they were very fairly recovered: and that the barons were in the right, both as to matter and substance, and no way reprobable for manner and form.

The charter of Henry I. was what the barons went by, and so must we; where, towards the latter end, we find these words: "I restore you the law of King Edward, with those amendments my father made to it by the advice of his parliament." Here was no new grant, he barely made restitution, and gave them back their own. And so we find it in his father's time. "He grants them the self-same laws and customs which his cousin Edward held before him." Or, as Ordericus Vitalis, a Norman, has it, "He granted to the English that they might persevere in the laws of their fathers." So that in effect he granted Englishmen to be Englishmen, to enjoy the laws they were born to, and in which they were bred; their father's laws, and their mother tongue. A country-man would call this a pig of their own sow. And yet this grant by way of charter, and under seal, whereby he gave them their own, and quitted all claim to it himself, was looked upon as the utmost confirmation and corroboration, and the last degree of settlement amongst the Normans. And therefore, though King William was too strong for his own charter, and shamefully broke it, yet they covenanted with his son Henry I. before they chose him king, that as soon as he was crowned he should give them another, which accordingly he did. In the same manner they dealt with King Stephen. And this made them covenant after the same manner with King John, before they admitted them to the crown; and so much insisted afterwards upon having his charter, and having their liberties secured and *fortified* with his seal, *sigillo suo munitas*, as they termed it. For in those days, what was not under seal, was not thought good in law: and not long before in Henry the second's time, the bishop of Lincoln. in a trial before the king, was for setting aside all the Saxon kings' charters granted to the Abby of St. Alban's, for want of a seal; till the king seeing a charter of Henry I. which confirmed them all, "Why here," says he, "is my grand-father's seal; this



seal is the seal of all the original charters, as much as if it were affixed to every one of them."—"Which wise decision of a young king was thought like Solomon's judgment in finding out the true mother. For the St. Alban's men had no way of answering their adversaries objection, That all privileges that wanted seals are void, because they could not absolutely say there were no seals in the Saxon times; there being a charter of Edward the confessor, granted to Westminster abby with a seal to it." But they might easily have bethought themselves that he was more than half a Norman.

Now these being the undoubted rights of the kingdom, their ancient laws, and liberties, and birthright, we have the less reason to be solicitous in what manner they shall at any time recover them: let them look to that, who violently or fraudulently keep them from them. For it would be a ridiculous thing in our law, for a man to have an estate in land, and he could not come at it. The law will give him a way. If the law gives the king royal mines, it gives him a power to dig in any man's land where they are, that he may come at his own. And so if a nation have rights, all that is necessary for the keeping and enjoying of them, is, by law, included in those rights themselves, as pursuant to them.

But, because this is a great point, and I would willingly leave it a clear one, I shall shew that the barons proceeded legally in their whole affair, and according to the known principles of the English government; and that all the pope's infallible bribe-arguments against them, which have been since plentifully transcribed, are nothing worth.

I might, indeed, content myself with the short blunt argument of Mr. Selden, who was known to have the learning of twenty men, and honesty in proportion. First, That the custom and usage of England is the law of England, as the usage of parliament is the law of parliament. Now the ancestors of K. John's barons recovered their rights in the same way. This was done in William the first's time, in the fourth year of his reign, when they raised a great army; and it was time, seeing that all they had lay at stake, under a cruel and insolent prince. Whereupon K. William being in a bodily fear of basely

losing the whole kingdom, which he had gained with the effusion of so much blood, and of being cut off himself, called a parliament to Barkhamsted, where he swore over again "To observe inviolably the good, ancient, approved laws of the realm, and especially the laws of K. Edward." How inviolably he afterwards kept that oath, and how "he enriched his Normans with the spoils of his own natural men, the English, who of their own accord, preferred him to the crown," I had rather the reader himself should find out, by his own perusal of that instructive piece of history. Secondly, The English government is upon covenant and contract. Now it is needless in leagues and covenants to say, what shall be done in case the articles are broken. If satisfaction be denied, the injured party must get it as he can. Taking of castles, ships, and towns, are not provided for and made lawful by any special article; but those things are always implied, and always done.

Yet seeing Pope Innocent III. in his bull for disannulling Magna Charta for ever, and in his excommunication of the barons, has afforded us his reasons for so doing, we can do no less than consider them. The weight of his charge against them is this: "That instead of endeavouring to gain what they wanted by fair means, they broke their oath of fidelity; that they who were vassals presumed to raise arms against their lord, and knights against their king, which they ought not to have done, put case he had unjustly oppressed them; and that they made themselves both judges and executors in their own cause; that they reduced him to those straits, that whatsoever they durst ask, he durst not deny; whereby he was compelled by force, and that fear which is incident to the stoutest man, to make a dishonourable and dirty agreement with them, which was likewise unlawful and unjust, to the great derogation and diminution of his own right and honour. Now because," says the pope, "it is spoken to me by the lord in the prophet, I have set thee up over nations and kingdoms, to pluck up and destroy, to build and to plant, he proceeds to damn as well the charter as the obligations and cautions in behalf of it; forbidding the king under the penalty of an anathema to keep it, or the barons to require it to be kept."



The barons might well say that the pope went upon false suggestions ; for he is out in every thing. For first, there was no winning of King John by seeking to him : he would not have granted them their liberties, if they had kissed his toe. The barons had really borne longer with him than they ought : for having stipulated to have their rights restored to them before they admitted him to the crown, it was too long to stay above fifteen years for them, and to suffer so much mischief to be done in the mean time through their neglect. In the third year of his reign, they met indeed at Leicester, and used a sort of negative means to come at their rights ; for they sent him word, " That unless he would restore them their rights they would not attend him into France." But upon this, as Hoveden says ; the king using ill counsel, required their castles ; and beginning with William Albini, demanded his castle of Beauvoir. William delivers his son in pledge, but kept his castle. And so upon several occasions, they were forced to deliver up for hostages their sons, nephews, and nearest of kin. And thus he tyrannized over them, till the archbishop put them into a right method : and when at last they had agreed to demand their rights, and had demanded them, they staid for an answer from Christmas to Easter ; for so long he demurred upon what he was bound to have done above fifteen years before, and then gave them a flat denial. So that all the world, saving his holiness, must say, that the barons were not rash upon him.

Nor secondly, that the barons had no regard to their oath of fidelity. For their oath of fidelity was upon this condition, that Earl John should restore all men their rights ; and upon the faith which his commissioners solemnly made to them that thus it should be, they swore fidelity to him at Northampton. So that King John had no right at all to this early oath of fidelity, because he himself would not keep covenant, nor fulfil the terms and conditions upon which it was made. The bargain was, Earl John should restore all men their rights ; upon this they were sworn : but earl John did not nor would not restore all men their rights ; and therefore it was Earl John himself that released them from their oath, and gave it them again. For I never heard of a covenant on one side. The

morrow after his coronation, he received their homages  
 and fealties over again, but that was the counterpart of  
 his coronation-oath. And that again he bitterly broke;  
 though when he was adjured not to presume to receive  
 the crown, unless he meant to fulfil his oath, he then  
 promised, "That by the help of God, he would keep all  
 that he had sworn *bona fide*." How he kept that part  
 which concerned the church, no way concerns this dis-  
 course, because he was at this time the pope's white boy,  
 having before given him his kingdoms of England and  
 Ireland, and had then sent him money to confound the  
 barons and charter. But the other two thirds of that  
 oath which concerned the people, I will here set down,  
 that every body who has read his reign, may see how  
 truly and faithfully he kept it. "That he would destroy  
 the bad laws, and establish good ones in their room, and  
 administer right justice in the realm of England." His  
 not keeping the oath to destroy perverse laws, and substi-  
 tute good, was the present controversy and quarrel which  
 his barons had with him. For the whole meaning of the  
 charter was to abolish all the ill depraved laws and  
 customs that had been introduced, and to restore the good  
 ancient and approved laws of the kingdom instead of  
 them. But the pope, amongst other proposals he made,  
 would fain have prevented and baffled the charter by this  
 expedient; "That King John should be bound to revoke  
 all abuses introduced in his time." This was a lame bu-  
 siness indeed, when the oppressed barons wanted to be re-  
 lieved from the tyrannous usages introduced in former  
 reigns, and from a succession of evils. King John by his  
 coronation-oath was bound to destroy and abolish all the  
 bad laws that were before him, and so are our kings to  
 this day, and not to make a former tyrannous reign a pat-  
 tern. The barons might indeed have had all King John's  
 later grievances redressed, and yet have perished under  
 the weight of such as were in his brother Richard's reign.  
 After Daniel has reckoned up several intolerable exactions  
 and grievances in that reign, he has these words. "And  
 with these vexations (saith Hovedon) all England, from  
 sea to sea, was reduced to extreme poverty; and yet it  
 ended not here: another torment is added to the confu-  
 sion of the subjects by the justices of the forests, who not



only execute those hideous laws introduced by the Normans, but impose others of more tyrannical severity, as the memory thereof being odious, deserve to be utterly forgotten; having afterwards by the hard labour of our noble ancestors, and the goodness of more regular princes, been asswaged, and now out of use." This deceitful remedy of the pope's therefore would have undone the barons, for such a partial reformation of abuses would have established all the rest; according to that known maxim, *Exceptio firmat regulam in casibus non exceptis*.

To return to King John's oath; neither did he keep that branch of it which relates to the administration of true and upright justice; unless you will allow the destroying of a brave baron, William Brause, and the famishing of his wife and two sons in Windsor Castle, for a rash word of her's; and the putting the archdeacon of Norwich into a sheet of lead, and several such barbarities, to be choice and eminent instances of it. So that when the pope charges the barons with the breach of their oath of fidelity to King John, it is unknown to me that they owed him any; which King John himself seemed to mistrust, when after the barons' demand of their liberties, he used that fruitless precaution of causing his whole kingdom to swear fidelity to him, and renew their homages. For what signified this swearing to him never so often, while he himself was breaking the original contract, and rendering all their fidelities mere nullities, by destroying the foundation of them, and the only consideration upon which they were made? It is, as Laud says, "A covenant is a knot, you need not loose both ends of it, but untying one end you unty both." And such is the mutual bond of ligeance betwixt king and people, it is conditional and reciprocal: and therefore it was impossible for King John's subjects to be bound while he was loose. That the fidelity of king's and subjects to each other is mutual, conditional, reciprocal, and dependent, I shall prove by the authority of two kings, who very well knew how that matter stood. It is a solemn covenant of their's, which because it is short, I will here transcribe. "They both of them enter a saving for the fidelity they owe to their subjects, so long as their subjects shall keep their fidelity to them." Here we have that expressed which

was ever implied : for whether the *Quamdiu, eonſque, quosque, uſquequo*, be in or out, it matters not. At K. Stephen's firſt parliament at Oxford, he made them a charter, which he promiſed before his coronation, whereby he freed both clergy and laity from all their grievances wherewith they had been oppreſſed, and confirmed it by his oath in full parliament : where likewiſe, ſays Daniel, the biſhops ſwore fealty unto him, but with this condition, " So long as he obſerved the tenor of this charter." Now it ſeems this clause of abundant cautelouſneſs was not in the oath of the earls and barons, neither needed it : for if K. Stephen broke with his people, of courſe their fealty ceaſed. This we have again expreſſed in words at length, in the ſolemn charter of the ſame king, wherein by conſent of parliament he adopted and made Henry II. his heir, and gave him and his heirs the realm of England.

Their duty to him ceaſed till he mended his fault, and returned again to keep his covenant ; *Quouſque errata corrigat, & ad prædictam pactionem obſervandam redeat.* Paulo infra. There is no need of theſe words at length at the end of every charter or petition of right, in caſe it be broken, which we find in the cloſe of Henry the third's charter, *Anno Regni 42. Liceat omnibus de Regno noſtro contra nos inſurgere, & ad gravamen noſtrum opem & operam dare, acſi nobis in nullo tenerentur.* " All the men in our realm may riſe up againſt us, and annoy us with might and main, as if they were under no obligation to us : " becauſe in the Poſiſh coronation-oath, which is likewiſe in words at length, we have a plain hint why they had better be omitted and ſuppreſſed. " And in caſe I break my oath, (which God forbid) the inhabitants of this realm ſhall not be bound to yield me any obedience." Now this God forbid, and the harſh ſuppoſition of breaking an oath at the very making of it, is better omitted, when it is for every body's eaſe rather to ſuppoſe that it will be faithfully kept ; eſpecially ſeeing that in caſe it be unhappily broken, the very natural force and virtue of a contract does of itſelf ſupply that omiſſion. Neither is it practiſed in articles of agreement and covenants under hand and ſeal between man and man, to make a ſpecial provision, that upon breach of covenants they



shall sue one another either at common-law, or in chancery: because this implies that one of them should prove a knave and dishonest; but when that comes to pass, I am sure Westminster-Hall cannot hold them.

In like manner the barons, after they had borne with K. John's breach of covenant very much too long, swore, at last, at the high altar at St. Edmonsbury, "That if he refused them their liberties, they would make war upon him so long as to withdraw themselves from their fidelity to him, till such time as he confirmed their laws and liberties by his charter." And afterwards, at the demand of them, they say that which is a very good reason for their resolve, "That he had promised them those ancient laws and liberties, and was already bound to the observation of them by his own proper oath." So that the pope was quite out, when he says the barons set at nought, and broke their oath of fidelity to K. John, for they only helped him to keep his.

The next thing objected against the barons is this: "That they who were vassals presumed to raise arms against their lord, and knights against their king; which they ought not to have done, although he had unjustly oppressed them. And that they made themselves both judges and executors in their own cause." All which is very easily answered. First, It was always lawful for vassals to make war upon their lords, if they had just cause. So our kings did perpetually upon the kings of France, to whom they were vassals all the while they held their territories in that kingdom. And by the law of England, an inferior vassal might fight his lord in a weighty cause, even in duel. The pope seems here willing to depress the barons with low titles, that he may the better set off the presumption of their proceedings; but before I have ended, I shall shew what vassals the barons were. I should be loth to say, that the kings of England were not all along as good men as their lords of France, or that the barons of England were not good enough to assert their rights against any body; but this I do say, that it was always lawful for vassals to right themselves even while they were vassals, and without throwing up their homage and fealty: for that was never done till they declared themselves irreconcilable enemies,

and were upon terms of defiance. Thus the kings of England always made war in defence of their rights, without throwing up their homage and fealty, till that last bitter enraged war of Henry II. wherein he had that ill success as broke his heart, and forced him to a dishonourable peace, the conclusion of which he out-lived but three days. Amongst other things, he did homage to the king of France, because, in the beginning of this war, he had rendered up his homage to him. Matt. Paris takes notice of it as an extraordinary thing, and I do not remember it done before. *Quia in principio hujus guerræ homagium reddiderat regi Franciæ, p. 151.* The same was practised by Henry III. towards that great man Richard, the marshal; he sent him a defiance by the bishop of St. David's into Wales. Upon which, the marshal tells friar Agnellus, the king's counsellor in that long conference before mentioned, *Unde homo suus non fui, sed ab ipsius homagio per ipsum absolutus.* This was reciprocal from the lord to the vassal, or from the vassal to the lord, as he found cause. And therefore, K. John's vassals, who are here represented as if they were food for tyranny, and bound by their places to be unjustly oppressed, for so the pope allows the case; I say, these vassals, if they had been so minded, instead of being contented with a charter at Running-Mead, might soon have been quite off of K. John, by resigning their homage to him. This K. Edward the second's vassals did in manner and form by the mouth of William Trussel, a judge, in these words: "I William Trussel, in the name of all men of the land of England, and of the whole parliament procurator, resign to thee, Edward, the homage formerly made to thee; and henceforward I defy thee, and prive thee of all royal power and dignity, and shall never hereafter be tendant on thee as king." This was the standing law long before the time of K. John's barons; for the parliament in the 10th of Richard II. sent the king a solemn message, that by an ancient statute, they had power to depose a king that would not behave himself as he ought, nor be ruled by the laws of the realm: and they instance in this deposing of Edward II. but withal, as a late and modern thing, in respect of the antiquity of that statute. Such an irrefragable testimony and declaration of a parlia-



ment so long since, concerning what was ordained in the eldest ages long before, plainly shews the English constitution, and is a full confutation of the late K. James's memorial at Ryswick. And this power seems to be well known to K. John's barons, who, when there is occasion, talk familiarly of *creating a new king*, and afterwards were forced to do it, though now they only sought their charter, and did not *attempt to take from him his kingdom*, which the pope indeed says, but it was not true.

So far have I cleared them from presumption as vassals: now as knights. It is true, their tenure was to assist the king against the enemies of the realm; but how, if he turned so himself? Unjust oppression, which is the pope's own supposition, is no friendly part. Must they then aid him against the realm, and be the instruments of his unjust oppression upon themselves? Their duty and service was to the realm in chief, to him it was subaltern: and therefore, knowing their duty better than the pope did, they all left K. John but seven, before he would consent to the parliament at Running-mead. For it is plain the pope would have had them passive-obedient knights, and a contradiction to their very order, whereby for certain they had forfeited their spurs.

"Yea, but the barons were judges and executors in their own cause." And who can help it, if they were made so in the first institution, and from the very foundation of this government? As soon as the Saxons had chosen from among themselves one king, this the mirror says expressly, was the jurisdiction of the king's companions. For though the king had no peer, yet if he wronged any of his people, it was not fit that he that was party should be likewise judge, nor for the same reason, any of his commissioners: and therefore these companions were, by their place, to right the subjects in parliament.

The same is more largely set down by the lord chief justice Bracton; and therefore I will transcribe it in his own words.

He says, "the king has these above him, God; also the law, which makes him a king; also his parliament, namely, the earls and barons, who ought to bridle a lawless king," &c. In this large passage you plainly see that what the barons did was so far from being the absurd and presumptuous usurpation of making themselves judges and

executors in their own cause, that it was their bounden duty. 'It was not only lawful for them to restrain and bridle a lawless king, but it was incumbent upon them under the greatest penalties, and neither lawful nor safe for them to let it alone. So that here the barons were hard beset; the pope delivers them up to Satan for what they did, and they had exposed themselves to the vengeance of God, and going to hell, if they had not done it. But they chose to do their duty to God and their distressed country, and to venture the causeless curse from Rome.

I might multiply quotations out of Fleta and others to the same purpose, but what I have set down is sufficient; and therefore I shall rather take this occasion to admire the wisdom of the English constitution, which seems to be built for perpetuity. For how can a government fail which has such lasting principles within it, and a several respective remedy lodged in the very bowels of it? The king has a known power of causing all his subjects to keep the law; that is an effectual remedy against lawlessness and anarchy: and the parliament has a power if need be, to hold the king to the observation of the laws; and that is a preservative against tyranny.

This is the palladium of our government, which cannot be stolen as their's was from Troy; for the keepers of it are too many to be killed, because every Englishman has an interest in it: for which reason neither can it be bought and sold, so as to make a title; and a man of a moderate understanding may easily undertake that it shall never be preached away from us. And hereby England is rendered the noblest commonwealth and kingdom in the world. I name commonwealth first, because K. James I. in one of his speeches to the parliament, says, "I am the great servant of the commonwealth." From hence I infer, that this was a commonwealth before he was the great servant of it. Great and little is not the dispute; for it is for the honour and interest of so glorious a state, to have a prince as great as they can make him. As, to compare great things with small, it is for the honour of the city to have a magnificent lord-mayor. And K. James told us no news in naming his office; for this is the country, as Fortescue's whole book shews us, "Where the king is appointed for the realm,



and not the realm for the king." And I can shew a hundred places in antiquity, where the body of this nation is called republic; as for instance, where Bracton says, laws are made *communi republicæ sponse*: though I confess in relation to a king, it oftner goes by the prouder name of realm. But this constitution of state and regal government, which is the constitution of England, cannot be so well understood by any other one book, as by my lord chancellor Fortescue's, which was a book written for the nonce, and to instruct the prince into what sort of government he was like to succeed. As directly opposite to this government, he has painted the French government, made up of *men at arms and edicts*. The prince in the conclusion of it, "Does not doubt but this discourse of the chancellor's will be profitable to the king's of England, which hereafter shall be:" and I am satisfied, that no wise king, after he has read that little book, would change governments with the Grand Seigneur.

And, as the prince has recommended the usefulness of this discourse to all future kings, so I heartily recommend it to the careful perusal of all Englishmen, who having seen a succession of bad kings, think themselves somewhat in them ill, and who see the English form of government is amiss; whether the fault be only in the administration; or if there be any thing to be any way or defect in any of the occasions, it may easily be ought to be rectified every part of it lies down, the book says.

I never heard of any that dissatisfied the English government but some of the prince's progenitors of England; who, thinking themselves ill governed by the English laws, endeavoured to throw off the yoke, that they might rule or rather rage over their subjects *in regal wise only*, not considering that to rule the people by laws of the state, *is not a yoke, but liberty*, and the greatest security, not only to the subject, but to the king himself, and in great measure rids him of care. But the same author, p. 88. tells us the success of this attempt: these progenitors of the prince, who thus endeavoured, with might and main, to be rid of this *state-government*, not only could not compass that larger power

which they grasped at, but risked both themselves and their kingdom. As we ourselves have likewise seen in the late K. James. Or, on the other side, perhaps it is disliked by some who have seen no other effects of it, but what have proceeded from the Scotch king craft, which is worse than no government at all. and have imputed these corruptions and disorders to the English frame of government; or at least, think that it has no remedy provided against them; and so have fallen into the waking dreams of I know not what, for want of understanding the true meaning of the English government. But I can assure these persons, that upon farther search they will find it quite otherwise, and that the English frame of government cannot be mended; and the old land-marks better placed, than we could have laid them with our own hands; and withal, that all new projects come a thousand years too late. For England has been so long formed to its own laws, and its laws to it, that we are all of a piece; and both in point of gratitude to our ancestors who have bent their lives to transmit them to us, and out of love and posterity to convey them a thing more valuable than our lives, we cannot think much at any time to venture upon a change. I am clearly of Sir Robert Philips's mind in the parliament *quarto Caroli*: "Nothing so endangers us as to change our majesty, as that opinion that we are antimonarchical is affected; whereas, such is and ever has been our policy, if we were to chuse a government, we should place this monarchy of England above all governments in the world." Which we lately have actually done, and no body could claim it, for they could only claim it as a forfeited title; and at a time when too much occasion had been given to the whole nation to be out of conceit with kings.

As for the remaining part of the pope's trash, it is not worth answering. "That the barons reduced K. John to those straits, that what they dared to ask he dared not to deny." For they asked him nothing but their own, which he ought not to have denied them, nor have put them to the trouble of coming so hardly by it. Nor was the granting of Magna Charta a *foul and dishonourable proposition*, but just and honourable, and therefore honourable because it was just. As for the compulsion



there was in it, a man that must be made to be honest; cannot complain of that himself, nor any body for him. In this whole affair, the pope's apostolical authority went farther than his arguments.

It is the lasting honour of Magna Charta and the barons, that they were run down by a pope and a general council, which were the first that established transubstantiation, and the deposing of kings for heresy, either their own, or even that of their subjects, if they suffered them in their dominions; in which case the pope was to absolve their subjects from their allegiance, to set up a crusade against them, and to dispose of their kingdoms to catholic free-booters. This was a powerful transforming metamorphosing council; but they that could turn a bit of bread into a god, might more easily turn better christians than themselves into Saracens. I take the decrees of that general council to be a standing declaration of war, yea a holy war, against all protestant princes and states to the end of the world; whereby all papists are the public and declared enemies of that part of mankind, whom they have been pleased to call heretics; for it is the established doctrine of their church.

Having disproved Laud's first charge against Magna Charta, *That it had an obscure birth*, as if it had been base-born, illegitimate, or upstart; I proceed to the second, *That it was fostered by an ill nurse*. In answer to which it would be sufficient to say, that it was fostered by a succession of kings, and above thirty parliaments; and if that be an ill nurse, let all the world find a better. But I shall be somewhat more particular, and shew what great care was taken of it in after-ages. In Edward the first's time, after it had been confirmed three times, ordered to be twice a-year read in churches, was sealed with the bishops' and barons' seals as well as the king's own, and sworn to by the barons and others, that they would forever afford their counsel and faithful aid towards their having it kept; I say, after all this, which was good nursing on the parliament's part, it had like to have been overlaid by the pope: for when the king thought his whole business in Scotland was settled, he entered into an intrigue with pope Clement V. very much to the prejudice of Magna Charta; but Mr. Daniel shall have the

honour of telling the story. " This pope was native of Bourdeaux, and so the more regardful of the king's desire, and the king more confident of his favour; which, to entertain and increase, he sends him a whole furniture of all vessels for his chamber of clean gold: which great gift so wrought with the pope, as he let loose his lion, untied the king from the covenant made with his subjects concerning their charters confirmed to them by his three last acts of parliament, and absolved him from his oath: an act of little piety in the pope, and of as little conscience in the king, who (as if he should now have no more need of his subjects) discovered with what sincerity he granted what he did.

But suddenly hereupon, there fell out an occasion that brought him back to his right orb again, made him see his error, and reform it; finding the love of his people lawfully ordered, to be that which gave him all his power and means he had, and to know their substances were intermutual. The news of a new king made and crowned in Scotland, was that which wrought the effect thereof. For upon this he went to Scotland, and not long after wintering at Carlisle, held his last parliament there: wherein, says Daniel, the state was mindful of the pope's late action, and got many ordinances to pass for reformation of the abuses of his ministers, and his own former exactions." In the next reign it was confirmed in the third year of Edward II. and afterwards greatly violated; but every body knows what came of that.

In K. Edward the third's time it received many noble confirmations; and amongst the rest in the forty-second year of his reign, it is provided, that all statutes made against Magna Charta are void. In the fourth year of Richard II. it was appointed by the archbishop and lord chancellor to be read at the opening of the parliament, as if it were the foundation and standard of our laws: and in short, it was confirmed over and over again in the succeeding reigns: so that it was always common law, it is now become a great part of the statute law; the statute called *The great charter of the liberties of England*, and *The laudable statute of Magna Charta*. With this honour and renown it descended all along down to us,



till it fell into the very dregs of tyranny, and then they pick quarrels with it for its birth and breeding.

Now to strip it out of Laud's disguising cant of an obscure birth and ill nursing, the plain notion of Magna Charta is this: It is a summary of the native and inherent rights of Englishmen, which the Norman kings, by granting afterwards by charter, bound themselves not to break in upon and invade: so that it was only a Norman-fashioned security, that these rights should not be violated. But we do not hold these rights by charter; no, not by the old dear-bought parchment and wax; for they are the birthright of Englishmen, which no kings could ever give or take away: they are, as they are called 25 Edward III. *The franchises of the land*, and every Englishman, by being born in the land, is born to them. And these original rights being a better inheritance to every Englishman than his private patrimony, how great soever, and being transmitted down to posterity by the hard labour, sweat, and blood of our ancestors, they are the *children's bread*: and it is not meet for us to take the children's bread and cast it away.

THE  
ARTICLES

UPON WHICH THE

GREAT CHARTER

OF

KING JOHN WAS FRAMED;

*Taken out of a Manuscript of the ABp. of Cant. Fol.*

14. *The Original whereof, with the Great Seal annexed, is extant in the hands of Dr. Gilb. Burnet, now Bishop of Salisbury\*.*

**T**HESE are the particulars which the barons demand, signed with K. John's seal.

Heirs of full age shall have their inheritance after the decease of their ancestors, paying the ancient relief to be expressed in the charter.

Heirs within age, and that have been in ward, shall have their inheritance, when they come at age, without paying relief or making fine.

The guardian of an heir's land shall take the reasonable issues, customs, and services, without the destruction or waste of his men or goods. And if such guardian make destruction and waste, he shall lose the wardship, and the guardian shall keep in repair the houses, parks, ponds, pools, mills, and other appurtenances to the estate, out of the profits of the land: and shall take care that the heirs be married without disparagement, and by the advice of their near kindred.

That a widow shall give nothing for her dower or mar-



riage after the death of her husband, but shall be suffered to dwell in her husband's house ninety days after his death; within which time her dower shall be assigned her, and she shall immediately have her marriage and her inheritance. The king nor his bailiff shall not seize any land for debt, if the debtor's goods be sufficient; nor shall the debtor's sureties be distrained upon, when the debtor himself is able to pay the debt. But if the debtor fail of payment, the sureties, if they will, may have the debtor's lands till the debt be fully satisfied, unless the principal debtor can shew that he is quit against his sureties.

The king shall not allow any baron to take aid of his free tenants, but for the redemption of his person, for the making his eldest son a knight, and towards the marriage of his eldest daughter once; and hereunto he shall have but a reasonable aid.

That none shall do more service for a knight's fee, than is due for the same. That common pleas shall not follow the king's court, but shall be holden in some certain place: and that recognitions be taken in their proper counties, and after this manner, viz. That the king shall send two justices four times a-year, who, together with four knights of the same shire, chosen by the shire, shall take *assizes of novel disseisin, mordancester, and darrein presentment*: nor shall any be summoned hereunto, but the jurors and the two parties.

That a freeman shall be amerced for a small fault after the manner of the fault, and for a great fault according to the greatness of the fault, saving his contentment. A villian also shall be amerced saving his wainage, and in like manner a merchant saving his merchandize, by the oath of good men of the vicinage: that a clerk shall be amerced according to his lay-fee in manner aforesaid, and not according to his ecclesiastical benefice.

That no town be amerced for not making bridges nor banks, but where they have been of old time, and of right ought to be.

That the measure of wine, of corn, and the breadth of cloth, and the like, be rectified, and so of weights.

That *assizes of novel disseisin and mordancester* be abbreviated, and so of other assizes.

That no sheriff shall intermeddle with pleas of the crown without the coroners; and that counties and hundreds shall be at the ancient farms without any increase, except the king's own demesne manors.

If any tenant of the king die, the sheriff, or other the king's bailiff, may seize and enroll his goods and chattels, by the view of lawful men; but yet so as that nothing thereof be taken away, till it be fully known whether he owe any clear debt to the king: and then the king's debt shall be paid, and the residue shall remain to the executors to perform the testament of the dead. And if nothing be owing to the king, all the goods shall go to the use of the dead.

If any freeman die intestate, his goods shall be distributed by his nearest kindred and friends, and by the view of the church.

Widows shall not be distrained to marry, if they are minded to live unmarried, provided they find sureties they will not marry without the king's assent, if they hold of the king, or without the consent of their lords of whom they hold.

No constable or other bailiff shall take any man's corn or other chattels, but he shall forthwith pay for the same, unless he may have respite by consent of the seller.

That no constable shall distrain any knight to give money for the keeping of his castle, if he himself will do it in his own proper person, or by another sufficient man, if he may not do it himself for a reasonable cause. And if the king lead him in his army, he shall be discharged of castleward for the time.

No sheriff or bailiff of the king, nor any other person, shall take the horses or carts of any freeman to make carriage without his leave.

The king, nor his bailiffs, shall not take any man's wood for castles or other occasions, but by licence of him whose the wood is.

That the king do not hold the lands of them that be convicted of felony, longer than a year and a day; after which they shall be delivered to the lord of the fee.

That all wears from henceforth be utterly put down in Thames and Medway, and throughout all England.

That the writ called Precipe be not, from henceforth



granted to any person of any freehold, whereby a freeman may lose his court.

If any be disseized or delayed by the king, without judgment, of lands, liberties, or other his right, he shall forthwith have restitution; and if any dispute arise upon it, it shall be determined by the judgment of the five and twenty barons. And such as have been disseized by the king's father, or his brother, shall have right immediately by the judgment of their peers in the king's court. And if the king must have the term of others that had taken upon them the cross for the holy land, the archbishop and bishops shall give judgment therein, at a certain day to be prefixed, without appeal.

That nothing be given for a writ of inquisition of life or member, but that it be freely granted without price, and be not denied.

If any hold of the king by fee-farm, by socage, or burgage, and of any other by knights-service, the king shall not have the custody of the heir, nor of his lands that are holden of the fee of another, by reason of such burgage, socage, or fee-farm; nor ought the king to have the custody of such burgage, socage, or fee-farm: and no freeman shall lose his degree of knighthood by reason of petty serjeanties, as when a man holds lands, rendering therefore a knife, an arrow, or the like.

No bailiff shall put any man to his law upon his own bare saying, without faithful witness.

That the body of a freeman be not taken, or imprisoned, nor that he be disseized, nor out-lawed, nor exiled, nor any way destroyed.

Nor that the king pass upon him, or imprison him by force, but only by the judgment of his peers, or by the law of the land.

That right be not sold, nor delayed, nor denied.

That merchants have liberty to go and come safely to buy and sell, without any manner of evil tolls, by the old and lawful customs.

That no escuage or aid be laid upon the kingdom, but by the common-council of the kingdom; unless it be to redeem the king's person, or to make his eldest son a knight, or to marry his eldest daughter once; and for these a reasonable aid shall be given. That it be in like

manner with respect to tallages and aids from the city of London, and other cities that have privileges therein: and that the city of London may fully enjoy her ancient liberties, and free customs, as well by water as by land.

That it shall be lawful for any man to go out of the kingdom, and to return, saving his allegiance to the king, unless it be in time of war for a short time, for the common profit of the realm.

If any borrow money of a Jew, be it more or less, and die before the debt be paid, no interest shall be paid for the same, so long as the heir is under age of whomsoever he hold. And if the debt become due to the king, the king shall take no more than what is contained in the charter.

If any man die and owe money to the Jews, his wife shall have her dower; and if he left children, necessities shall be provided them according to the quantity of the freehold, and the residue shall go to pay off the debt, saving the services due to the lords. The like shall be observed in case of other debts; and when the heir comes of age, his guardian shall restore him his land as well stocked as he could reasonably afford out of the profits of the land, coming in by the plough and the cart.

If any man hold of any escheat, as of the honour of Wallingford and Nottingham, Bonon and Lancaster, or of other escheats, which are in the king's hand and are baronies, and die, his heir shall pay no other relief, nor perform any other service than he should have paid and performed to the baron; and that the king shall hold such escheats as the barons held them.

That fines made for dowers, marriages, inheritances and amerciaments, wrongfully and contrary to the law of the land, be freely remitted, or ordered by the judgment of the five and twenty barons, or of the major part of them, together with the archbishop and such as he shall call to him; provided that if one or more of the five and twenty have themselves any like complaint, that then he or they shall be removed, and others put in their rooms by the residue of the five and twenty.

That the hostages and deeds be restored, which were delivered to the king for his security.

That they that live out of the forest be not obliged to



come before the justice of the forest by common summons, unless they be parties or pledges: and that the evil customs of the forests and foresters, warrens and sheriffs, and ponds, be redressed by twelve knights of each county, who shall be chosen by the good men of the county.

That the king remove wholly from the bailiffwick the kindred and whole dependence of Gerard d'Aties, that hereafter they have no bailiffwick, to wit, Engeland, Andrew, Peter, and Gigo de Cances, Gigo de Cygon, Matthew de Martino and his brethren, and Gelfrid his nephew, and Philip de Mark.

And that the king put away the foreign soldiers, stipendiaries, slingers, and troopers and their servants, who came with horses and arms to the nuisance of the realm.

That the king make justiciaries, constables, sheriffs and bailiffs, of men that know the law of the land, and will cause it to be well observed.

That barons who have founded abbies, for which they have charters of kings, or ancient tenures, shall have the custody of them when they are vacant.

If the king has disseized the Welchmen, or esloined them from lands or liberties, or of other things in England or Wales, let them presently be restored to them without plea: and if they have been disseized or esloined from their English tenements by the king's father or his brother, without the judgment of their peers, the king shall without delay do them justice, as he does justice to Englishmen of their English tenements according to the law of England, and of Welch tenements according to the law of Wales, and of tenements in the marches according to the law of the marches. In like manner the Welchmen shall do to the king and his subjects.

That the king restore Lewelin's son, and all the Welsh hostages, and the deeds that were delivered to him for the security of the peace.

That the king do right to the king of Scotland, concerning restoring of hostages, and his liberties and right, according to the form of the agreement with his barons of England, unless it ought to be otherwise by virtue of some deeds which the king has, by the judgment of the archbishop and others, whom he shall think fit to call to him.

That all forests that have been afforested by the king in his own time, be disafforested; and so of banks, which by the king himself have been put in defence.

All these customs and liberties which the king has granted to the kingdom, to hold and keep for his own part towards his men, all clerks and laymen of the kingdom shall observe and keep their parts towards their men.

This is the form of the security for keeping peace and the liberties betwixt the king and the kingdom. The barons shall chuse five and twenty barons of the realm, whom they will themselves, upon whom it shall be incumbent, that with all their might they observe and keep, and cause to be observed and kept, the peace and liberties which the king has granted to them; and confirmed by his charter; to wit, "That if the king, or his justices, or bailiffs, or any of his ministers, offend any person contrary to any of the said articles, or transgress any article of this peace and security, and that such offence be made known to four of the said five and twenty barons; those four barons shall go to the king, or to his justiciary, if the king be out of the realm, declaring to him that such an abuse is committed, and shall desire him to cause it speedily to be redressed. And if the king, or (if he be out of the realm) his justiciary, do not redress it, those four barons shall within a reasonable time, to be limited in the charter, refer the matter to the residue of the five and twenty barons. And those five and twenty, with the commonalty of all the land, shall distress the king all the ways they can, to wit, by seizing his castles, his lands and possessions, and by what other means they can, till it be redressed according to their good liking, saving the person of our lord the king, and of the queen and of their children. And when it is redressed, they shall be subject to the king as before." And whoever will may swear to put these things in execution, viz. To obey the commands of the said five and twenty barons, and to distress the king to the utmost of his power with them. And the king shall give public and free liberty for any man to swear that will, and shall never prohibit any to swear. And all those of the nation, who will voluntarily of their own accord swear to the five and twenty barons to distress



the king with them, the king himself shall issue his precept, commanding them to swear as aforesaid.

Item, if any of the said five and twenty barons die, or go out of the realm, or be any other way hindered from performing these things, the residue of the five and twenty shall chuse another, whom they think best, in his place, who shall be sworn as the rest are. And in all matters referred to those five and twenty barons, if they happen to be all present, and differ amongst themselves; or if any of them being thereto appointed, will not or cannot come, what the major part of them shall agree upon and enjoin shall be valid, as if all the five and twenty had agreed in it. And the said five and twenty shall swear, that they will faithfully observe and keep the articles aforesaid, and with all their might cause them to be observed. Moreover the king shall give them the securities of the archbishop and bishops, and Master Pandulphus, that he will not obtain any thing from the pope, whereby any of these articles of agreement may be revoked or diminished. And if any such thing be obtained, that it be reputed void and of none effect, nor shall ever be made use of.

## GREAT CHARTER

OF

KING JOHN;

A TRUE COPY FROM THE

ORIGINAL FRENCH.

I. JOHN, by the grace of God, king of England, to the archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, prevoists, ministers, and all his bailiffs and his lieges, greeting. Know ye, that we by the grace of God, and for the saving of our soul, and the souls of all our ancestors, and of our heirs, and for the honour of God, and the safety of holy church, and for the amendment of our government, by the advice of our honoured fathers, Stephen, archbishop of Canterbury, primate of all England, and cardinal of Rome; Henry, archbishop of Dublin, William, bishop of London, Peter, bishop of Winchester, Jocelin, bishop of Bath, Hugh, bishop of Lincoln, Walter, bishop of Worcester, William, bishop of Chester, Benedict, bishop of Rochester, and Master Pandulph, sub-deacon of our Lord the apostle, and of our friend, brother Anner, master of the order of knights templars in England; and by the advice of our barons, William, earl marshal earl of Pembroke, William, earl of Salisbury, William, earl of Warren, William, earl of Arundel, Alan of Galloway, constable of Scotland, Warin Fitz-Gerald, Peter Fitz-Herbert, Thomas Basset, Alan Basset, Philip d'Aubenie, Robert de Ropelee, John Marshal, and John Fitz-Hugh, and by the advice of other lieges:

II. HAVE in the first place granted to God, and confirmed by this our present charter, for us and for our heirs for ever, That the churches of England shall be free, and



shall enjoy their rights and franchises entirely and fully : and this our purpose is, that it be observed, as may appear by our having granted, of our mere and free will, that elections should be free (which is reputed to be a very great and very necessary privilege of the churches of England) before the difference arose betwixt us and our barons, and by our having confirmed the same by our charter, and by our having procured it moreover to be confirmed by our lord the apostle Innocent the third. Which privilege we will maintain : and our will is, that the same be faithfully maintained by our heirs for ever.

III. WE have also granted to all freemen of our kingdom, for us and for our heirs for ever, all the liberties hereafter mentioned, to have and to hold to them and their heirs of us and our heirs. If any of our earls, our barons, or others that hold of us in chief by knight-service, die ; and at the time of his death his heir be of full age, and relief be due, he shall have his inheritance by the antient relief ; to wit, the heir or heirs of an earl, for an entire earldom, C. pounds ; the heir or heirs of a baron, for an entire barony, C. marks ; the heir or heirs of a knight for a whole knight's fee, C. shillings at most : and where less is due, less shall be paid, according to the antient customs of the several tenures.

IV. If the heirs of any such be within and in ward, they shall have their inheritance when they come of age without relief, and without fine.

V. THE guardians of the land of such heirs being within age, shall take nothing out of the land of the heirs, but only the reasonable profits, reasonable customs, and reasonable services, and that without making destruction or waste of men or goods.

VI. AND if we shall have committed the custody of the land of any such heir to a sheriff, or any other who is to account to us for the profits of the land, and that such committee make destruction or waste, we will take of him amends, and the land shall be committed to two lawful

and good men of that fee, who shall account for the profits to us, or to such as we shall appoint.

VII. AND if we shall give or sell to any person, the custody of the lands of any such heir, and such donee or vendee make destruction or waste, he shall lose the custody, and it shall be committed to two lawful, sage, and good men, who shall account to us for the same, as aforesaid.

VIII. AND the guardian, whilst he has custody of the heir's land, shall maintain the houses, ponds, parks, pools, mills, and other appurtenances to the land, out of the profits of the land itself; and shall restore to the heir, when he shall be of full age, his land well stocked, with ploughs, barns, and the like, as it was when he received it, and as the profits will reasonably afford.

IX. HEIRS shall be married without disparagement; insomuch, that before the marriage be contracted, the persons that are next of kin to the heir, be made acquainted with it.

X. A WIDOW after the death of her husband, shall presently and without oppression, have her marriage and her inheritance; nor shall give any thing for her marriage, nor for her dower, nor for her inheritance, which she and her husband were seized of the day of her husband's death: and she shall remain in her husband's house forty days after his death; within which time her dower shall be assigned her.

XI. No widow shall be compelled to marry if she be desirous to live single, provided she give security not to marry without our leave, if she hold of us, or without the lord's leave of whom she holds, if she hold of any other.

XII. WE nor our bailiffs will not seize the lands or rents of a debtor for any debt so long as his goods are sufficient to pay the debt: nor shall the pledges be distrained upon whilst the principal debtor is able to pay



the debt. But if the principal debtor have not wherewith to pay the debt, the pledges shall answer for it: and if they will, they shall have the lands and rents of the debtor till they have received the debt which they paid for him, if the principal debtor cannot shew that he is quit against his pledges.

XIII. If any persons have borrowed money of Jews, more or less, and die before they have paid the debt, the debt shall not grow whilst the heir is under age; and if such debt become due to us, we will take no more than the goods expressed in deed.

XIV. AND if any die, and owe a debt to the Jews, his wife shall have her dower, and shall be charged with no part of the debt; and if the children of the deceased person be within age, their reasonable estovers shall be provided them, according to the value of the estate which their ancestor had; and the debt shall be paid out of the residue, saving the services due to the lord. In like manner shall it be done in cases of debts owing to other persons that are not Jews.

XV. WE will impose no escuage nor aids within our realm, but by the common council of our realm, except for our ransom, and for the making our eldest son a knight, and for marrying our eldest daughter once: and for these purposes there shall but a reasonable aid be required.

XVI. In like manner shall it be done within the city of London: and moreover the city of London shall have all her antient customs and liberties by land and water.

XVII. WE will moreover, and grant, that all other cities, and boroughs, and towns, and ports, have, in all respects, their liberties and free customs.

XVIII. And as for coming to the common council of the kingdom, and for assenting aids (except in three cases aforesaid) and as for the assenting of escuage, we will cause

to be summoned the archbishops, bishops, abbots, earls, and the greater barons, each in particular by our letters; and moreover, we we will cause to be summoned in general, by our sheriffs, and bailiffs, all that hold of us in chief, at a certain day; to wit, forty days after at least, and at a certain place; and in our said letters we will express the cause of the summons. And when the summons shall be so made, business shall go on at the day assigned, by the advice of such as are present, though all that are summoned do not appear.

XIX. We will not allow for the future, that any take aid of his free-men, but only to ransom his person, to make his eldest son a knight, and to marry his eldest daughter once; and for these purposes there shall but a reasonable aid be given.

XX. NONE shall be distrained to do greater service for a knight's-fee, or for any other frank-tenement than what is due by his tenure.

XXI. COMMON pleas shall not follow our court, but shall be held in a certain place.

XXII. RECOGNIZANCES of *novel disseisin*, *mordancester*, and *darrien presentment*, shall be taken no where but in their proper counties, and in this manner: We, or our chief justice (if ourselves be out of the realm) will send two justices through every county four times a-year; who, with four knights of every county, to be chosen by the county, shall take the said assizes in the county, at a day when the county-court is held, and in a certain place; and if the said assizes cannot be taken upon that day, so many knights and free tenants of them that were present in the county-court that day, shall stay, as may give a good judgment, according as the concern may be greater or less.

XXIII. A FREEMAN shall not be amerced for a little offence, but according to the manner of his offence; and for a great offence he shall be amerced according to the greatness of his offence, saving his contentment; and so a merchant saving his merchandize; and a villain in like manner shall be amerced saving his wainage, if he fall into our mercy: and none of the said amercements shall be



affected, but by oath of good and lawful men of the vicinage.

XXIV. An earl and a baron shall not be amerced but by their peers, and according to the manner of their offence.

XXV. No clerk shall be amerced but according to his lay-fee, and in like manner as others aforesaid, and not according to the quantity of his church-living.

XXVI. No villē nor any man shall be distrained to make bridges over rivers, but where they anciently have, and of right, ought to make them.

XXVII. No sheriffs, constables, coroners, nor other our bailiffs, shall hold the pleas of our crown.

XXVIII. ALL counties, hundreds, wapentakes and tithings, shall be at the ancient farms without being raised, except our own demesne manors.

XXIX. If any that holds of us a lay-fee die, and our sheriffs, or other our bailiffs shew our letters patents of summons for a debt which the deceased owed to us, our sheriff or bailiff may well attach and inventory the goods of the dead, which shall be found upon his lay-fee, to the value of the debt which the deceased owed to us, by the view of lawful men, yet so as nothing be removed till such time as the debt, which shall be found to be due to us, be paid; and the residue shall go to the executors to perform the testament of the dead: and if nothing be owing to us, all his goods shall go to the use of the dead, saving to his wife and children their reasonable parts.

XXX. If any freeman die intestate, his goods shall be divided by the hands of his near kindred and friends by the view of holy church, saving to every one their debts which the dead owed them.

XXXI. NONE of our constables, nor other our bailiffs shall take the corn, nor other the goods of any person without paying for the same presently, unless he have time given him by consent of the vendor.

XXXII. OUR constables shall distrain no man who holds by knight-service, to give money for castle-guard,

if he has performed it himself in proper person, or by another good man, if he could not perform it himself for some reasonable cause : and if we lead him, or send him into the army, he shall be discharged of castle-guard for so long time as he shall be with us in the army.

XXXIII. Our sheriffs, our bailiffs, or others, shall not take the horses nor carts of any freeman to make carriage, but by leave of such freeman.

XXXIV. Neither ourselves nor our bailiffs shall take another man's wood for our castles, or other occasions, but by his leave whose wood it is.

XXXV. We will hold the lands of such as shall be convicted of felony but a year and a day, and then we will restore them to the lords of the fees.

XXXVI. All wears shall, from this time forward, be wholly taken away in Thames and Medway, and throughout all England, except upon the sea-coast.

XXXVII. The writ called Precipe henceforth shall be made to none out of any tenement, whereby a freeman may lose his court.

XXXVIII. One measure of wine shall be used throughout our kingdom, and one measure of ale, and one measure of corn, to wit, the London quart. And there shall be one breadth of dyed cloths, russets, and haubergets, to wit, two ells within the lists : and concerning weights, it shall be in like manner as of measures.

XXXIX. Nothing shall be given or taken henceforth for a writ of inquisition of life or member, but it shall be granted freely and shall not be denied.

XL. If any hold of us by fee-farm, or by soccage, and hold likewise land of others by knight-service, we will not have the custody of the heir, nor of the land which is of the fee of another, by reason of such fee-farm, soccage, or burgage, unless such fee-farm owe knight-service.

XLI. We will not have the wardship of the heir, nor of the land of any person, which he holds of another by knight-service, by reason of any petit serjeantry by



which he holds of us, as by the service of giving us arrows, knives, or such like.

XLII. No bailiff for the time to come shall put any man to his law upon his bare word, without good witnesses produced.

XLIII. No freeman shall be taken, nor imprisoned, nor disseized, nor out-lawed, nor exiled, nor destroyed in any manner; nor will we pass upon him, nor condemn him, but by the lawful judgment of his peers, or by the law of the land.

XLIV. We will sell to none, we will deny nor delay to none right and justice.

XLV. ALL merchants may, with safety and security, go out of England, and come into England, and stay, and pass through England by land and water, to buy and sell without any evil tolls, paying the ancient and rightful duties, except in time of war; and then they that are of the country with whom we are at war, and are found here at the beginning of the war, shall be attached, but without injury to their bodies or goods, till it be known to us or to our chief-justice, how our merchants are entreated which are found in our enemies' country; and if our's be safe there, they shall be safe in our land.

XLVI. It shall be lawful for all men in time to come to go out of our kingdom, and to return safely and securely by land and by water, saving their faith due to us, except it be in time of war for some short time for the profit of the realm. But out of this article are excepted persons in prison, persons out-lawed, according to the law of the land, and persons of the country with whom we are at war. Concerning merchants what is above-said shall hold as to them.

XLVII. If any hold of any escheat, as of the honour of Wallingford, Nottingham, Boloin, Lancaster, or of other escheats which are in our hand, and are baronies, and die, his heirs shall owe to us no other relief, nor do us any other service, than was due to the baron of such barony when it was in his hand; and we will hold the same in like manner as the baron held it.

**XLVIII.** Men that dwell out of the forest, shall not appear before our justices of the forest by common summons, unless they be in suit themselves, or bail for others who are attached for the forest.

**XLIX.** We will not make sheriffs, justices, nor bailiffs, but of such as know the law of the land, and will keep it.

**L.** All that have founded abbies, whereof they have charters from the kings of England, or ancient tenure, shall have the custody thereof whilst they are vacant, as they ought to have.

**LI.** All the forests that have been afforested in our time, shall instantly be disafforested; in like manner be it of rivers, that in our time and by us have been put in defence.

**LII.** All evil customs of forests and warrens, and of foresters and warreners, of sheriffs and their ministers, of rivers and of guarding them, shall forthwith be inquired of in every county by twelve knights sworn of the same country, who must be chosen by the good men of the same county. And within forty days after they have made such inquisition, the said evil customs shall be utterly abolished by those same knights, so as never to be revived; provided they be first made known to us, or to our chief justice if we be out of the realm.

**LIII.** We will, forthwith, restore all the hostages, and all the deeds which have been delivered to us by the English, for surety of the peace, or of faithful service.

**LIV.** We will wholly put out of bailiffwicks, the kindred of Gerard de Aties, so that from henceforth they shall not have a bailiffwick in England; and Engeland de Cigoigni, Peron Guyon, Andrew de Chanceas, Gyon de Cygoigni, Geoffry de Martigni and his brothers, Philip, Mark and his brothers, Geoffry his nephew and all their train. And presently after the peace shall be performed, we will put out of the realm all knights, foreigners, slingers, serjeants and soldiers, who came with horse or arms to the nuisance of the realm.

**LV.** If any be disseized or esloined by us, without



lawful judgment of his peers, of lands, chattels, franchises, or of any right, we will, forthwith, restore the same; and if any difference arise upon it, it shall be determined by the judgment of the five and twenty barons, of whom mention is made hereafter in the security for the peace.

LVI. As to all things whereof any have been disseized, or esloined without lawful judgment of their peers, by King Henry our father, or by King Richard our brother, which we have in our hands, or which any other has, to whom we are bound to warrant the same, we will have respite to the common term of them that are crossed for the holy land, except such things for which suits are commenced, or inquest taken by our order before we took upon us the cross. And if we return from the pilgrimage, or perhaps forbear going, we will do full right therein. The same respite we will have, and the same right we will do in manner aforesaid, as to the disafforesting of forests, or letting them remain forests, which the kings, Henry our father, or Richard our brother have afforested; and as to the custodies of lands which are of the fee of other persons, which we have held till now by reason of other men's fees, who held of us by knight-service; and of abbies that are founded in other men's fees, in which the lords of the fees claim a right: and when we shall be returned from our pilgrimage, or if we forbear going, we will immediately do full right to all that shall complain.

LVII. NONE shall be taken nor imprisoned upon the appeal of a woman, for the death of any other than her husband.

LVIII. ALL the fines and all the amercements that are imposed for our use, wrongfully and contrary to the law of the land, shall be pardoned; or else they shall be determined by the judgment of the five and twenty barons, of whom hereafter, or by the judgment of the greater number of them that shall be present, or before Stephen, archbishop of Canterbury, if he can be there, and those that he shall call to him; and if he cannot be present, matters shall proceed, notwithstanding, without him; so always, that if one or more of the said five and twenty barons be concerned in any such complaint, they shall

not give judgment thereupon, but others chosen and sworn shall be put in their room to act in their stead, by the residue of the said five and twenty barons.

LIX. If we have disseized or esloined any Welchmen of land, franchises, or of other things, without lawful judgment of their peers, in England or in Wales, they shall, forthwith, be restored unto them; and if suits arise thereupon, right shall be done them in the Marches by the judgment of their peers; of English tenements according to the law of England, and of tenements in Wales according to the law of Wales; and tenements in the Marches according to the law of the Marches: and in like manner shall the Welch do to us and our subjects.

LX. As for all such things, whereof any Welchmen have been disseized or esloined, without lawful judgment of their peers, by King Henry our father, or by King Richard our brother, which we have in our hands, or which any others have, to whom we are bound to warrant the same, we will have respite till the common term be expired of all that crossed themselves for the Holy Land, those things excepted whereupon suits were commenced, or inquests taken by our order before we took upon us the cross; and when we shall return from our pilgrimage, or if, peradventure, we forbear going, we will presently cause full right to be done therein according to the laws of Wales, and before the said parties.

LXI. We will forthwith restore the son of Lewelyn, and all the hostages of Wales, and the deeds that have been delivered to us for security of the peace.

LXII. We will deal with Alexander, king of Scotland, as to the restoring him his suitors and his hostages, his franchises and rights, as we do with our other barons of England, unless it ought to be otherwise by virtue of the charters which we have of his father William, late king of Scotland; and this to be by the judgment of his peers in our court.

LXIII. ALL these customs and franchises aforesaid, which we have granted to be kept in our kingdom, so far forth as we are concerned, towards our men, all persons of the kingdom, clerks and lay, must observe for their parts towards their men.



**LXIV.** And, whereas, we have granted all these things for God's sake, and for the amendment of our government, and for the better compromising the discord arisen betwixt us and our barons: we, willing that the same be firmly held and established for ever, do make and grant to our barons the security underwritten; to wit, That the barons shall chuse five and twenty barons of the realm, whom they list who shall, to their utmost power, keep and hold, and cause to be kept, the peace and liberties which we have granted and confirmed by this our present charter; inasmuch, that if we, or our justice, or our bailiff, or any of our ministers, act contrary to the same in any thing, against any persons, or offend against any article of this peace and security, and such our miscarriage be shewn to four barons of the said five and twenty, those four barons shall come to us, or to our justice, if we be out of the realm, and shew us our miscarriage, and require us to amend the same without delay; and if we do not amend it, or if we be out of the realm, our justice do not amend it within forty days after the same is shewn to us, or to our justice if we be out of the realm, *then the said four barons shall report the same to the residue of the said five and twenty barons; and then those five and twenty barons, with the commonalty of England, may distress us by all the ways they can; to wit, by seizing on our castles, lands, and possessions, and by what other means they can, til it be amended, as they shall adjudge; saving our own person, the person of our queen, and the persons of our children: and when it is amended, they shall be subject to us as before.* And whoever of the realms will, may swear, that for the performance of these things he will obey the commands of the said five and twenty barons, and that, together with them, he will distress us to his power: and we will give public and free leave to swear to all that will swear, and will never hinder any one: and for all persons of the realm, that of their own accord will swear to the said five and twenty barons to distress us, we will issue our precept, commanding them to swear as aforesaid.

**LXV.** And if any of the said five and twenty barons die, or go out of the realm, or be any way hindred from

acting as aforesaid, the residue of the said five and twenty barons shall chuse another in his room, according to their discretion, who shall swear as the others do.

LXVI. AND as to all things which the said five and twenty barons are to do, if peradventure, they be not all present, or cannot agree, or in case any of those that are summoned cannot or will not come, whatever shall be determined by the greater number of them that are present, shall be good and valid, as if all had been present.

LXVII. AND the said five and twenty barons shall swear, that they will faithfully observe all the matters aforesaid, and cause them to be observed to their power.

LXVIII. AND we will not obtain of any one for ourselves, or for any other, any thing whereby any of these concessions, or of these liberties may be revoked or annihilated; and if any such thing be obtained, it shall be null and void, nor shall ever be made use of by ourselves or any other.

LXIX. AND all ill-will, disdain, and rancour, which has been between us and our subjects of the clergy and laity since the said discord began, we do fully release and pardon to them all. And moreover, all trespasses that have been committed by occasion of the said discord since Easter, in the sixteenth of our reign, to the restoring of the peace, we have fully released to all clerks and laymen; and so far as in us lies we have fully pardoned them: And further, we have caused letters patent to be made to them in testimony hereof, witnessed by Stephen, archbishop of Canterbury, Henry, archbishop of Dublin, and by the aforesaid bishops, and by Mr. Pandulphus, upon this security and these concessions. Whereby, we will and strictly command, that the church of England be free, and enjoy all the said liberties, and rights, and grants, well and in peace, freely and quietly, fully and entirely to them and their heirs, in all things, in all places, and for ever as aforesaid. And we and our barons have sworn that all things above written, shall be kept on our parts, in good faith, without ill design. The witnesses are the persons above-named and many others.

LXX. This charter was given at the meadow called



Running-Mead, betwixt Windsor and Stanes, the fifteenth day of June, in the seventeenth year of our reign.

JOHN, by the grace of God, king of England, to the sheriff of Hampshire, and to the twelve that are chosen in that county, to enquire of, and put away, the evil customs of the sheriffs, and of their ministers, of forests and foresters, of warrens and warreners, of rivers, and of guarding them, greeting. We command you, that without delay, you seize into our hand, the lands and tenements, and the goods of all those of the county of Southampton, that will not swear to the said five and twenty barons, according to the form expressed in our charter of liberties, or to such as they shall have thereunto appointed; and if they will not swear presently, at the end of fifteen days after their lands, and tenements, and chattels are seized into our hands, that ye sell all their goods, and keep safely the money that ye shall receive for the same, to be employed for the relief of the holy land of Jerusalem; and that ye keep their lands and tenements in our hands till they have sworn, or that Stephen, archbishop of Canterbury, and the barons of our kingdom have given judgment thereupon. In witness whereof, we direct unto you these our letters patent. Witness our self: at Odiham, the seven and twentieth day of June, in the seventeenth year of our reign.

## TWO OTHER STATUTES OF KING EDWARD III.

Anno 4. Edward 3. cap. 14.

*A Parliament shall be holden once every year.*

ITEM, it is accorded that a parliament shall be holden every year once, and more often, if need be.

Anno 36. Edward 3. cap. 10.

*A parliament shall be holden once in the year.*

ITEM, for maintenance of the said articles and statutes, and redress of divers mischiefs and grievances, which dai-

ly happen, a parliament shall be holden every year, as another time was ordained by statute.

### THE COMMENT.

BEFORE the conquest (as the victory of Duke William of Normandy over Harold the usurper, is commonly, though very improperly called,) parliaments were to be held twice every year, as appears by the laws of King Edgar, cap. 5. and the testimony of the *Mirroure of Iustices*, cap. 1. sect. 3. For the estates of the realm. King Alfred caused the committees (some English translations of that ancient book read, earls, but the word seems rather to signify commissioners, trustees, or representatives) to meet, and ordained for a PERPETUAL USAGE, that twice in the year, or oftner, if need were, in time of peace they should assemble at London, to speak their minds for the guiding of the people of God, how they should keep themselves from offences, live in quiet and have right done them by certain usages and sound judgments. King Edward the first (says Cook, 4. Instit. fol. 97.) kept a parliament once every two years for the most part: And now in this King Edward the third's time (one of the wisest and most glorious of all our kings.) it was thought fit to enact by these two several statutes: That a parliament should be held once at least every year, which two statutes are to this day in full force: For they are not repealed, but rather confirmed by the statute made in the 16th of our present sovereign, King Charles the second, cap. 1. intituled, An act for the assembling and holding of parliaments once in three years at the least: The words of which are as follow.

“ Because by the ancient laws and statutes of this realm, made in the reign of King Edward the third parliaments are to be held very often, your majesties humble and loyal subjects, the lords spiritual and temporal, and the commons in this present parliament assembled, most humbly do beseech your most excellent majesty, that it may be declared and enacted. (2) And be it declared and enacted, by the authority aforesaid, that hereafter the fitting and holding of parliaments shall not be intermitted or discontinued above three years at the most: but that with-



in three years from and after the determination of this present parliament, so from time to time within three years after the determination of any other parliament or parliaments, or if there be occasion, more or oftner, your majesty, your heirs and successors, do issue out your writs for calling, assembling and holding of another parliament, to the end there may be a frequent calling, assembling and holding of parliaments once in three years at the least.

Agreeable to these good and wholesome laws are those gracious expressions and promises in his majesties proclamation touching the causes and reasons of dissolving the two last parliaments, dated April 8. 1681. "Irregularities in parliament shall NEVER make us out of love with parliaments, which we look upon as the best method for healing the distempers of the kingdoms, and the only means to preserve the monarchy in that due credit and respect which we ought to have both at home and abroad. And for this cause we are resolved by the blessing of God to have frequent parliaments; And both in and out of parliament to use *our utmost endeavours to extirpate popery*, and to redress all the grievances of our good subjects, and in all things to govern according to the laws of the kingdom."

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C H A P. I.

Shewing that the frequent meeting of parliaments is the basis of our constitution, and the true form of the government; and that the intermission of them is inconsistent with the body of the English law.

IF a man would have an entire view of the English constitution, he must have recourse to those able and approved authors who have written purposely on that subject. For it is a rule, *Parvo est auctoritas, aliud agentis*; and what is said by the by, is of less weight, than what is professedly handled; provided it have been maturely considered, by a competent judge of that matter which he treats. And in this kind we do not find a man better qualified than the learned lord chancellor FORTESCUE, who was an aged lawyer, and had been lord chief justice of England when he wrote his book *De laudibus Legum Angliæ*, which was on purpose in a dialogue with the prince



of Wales, to inform him of the nature of the English constitution, and to let him know by what sort of laws the realm, in which he was to succeed his father, was to be governed. And therefore he adjures him over and over again to addict himself to the understanding of the laws of his father's realm, wherein he was to succeed; and having shewn the prince the different nature of realms, where a King could tyrannize, and where he could not, being restrained by politic laws. Rejoice therefore, says he, most excellent prince! and be glad, that the law of the realm, in which you are to succeed, is such, for it shall exhibit and minister to you and your people no small security and comfort.

BUT out of that excellent book which I believe no way warped, (for then it must lean towards the court, partly because of the flattery and officiousness, which are too often found in dialogues with princes, and partly because the author was retained on the crown-side by the greatest office in England) I will confine myself to those passages only which relate to the frequency of parliaments. And the first I meet with is in his 18th chap. concerning the statutes of England\*.

“ AND if these statutes fall short of their intended efficacy, though devised with such great solemnity and wisdom of parliament; they may very quickly be reformed, but not without the assent of the commons and peers of the realm, which was their source from the beginning.”

Now I only desire that the word *Concito* may be taken notice of, which is the quickest word that can be imagined, and shews that our parliaments were

\* *Et si statuta hac, tanta solemnitate & prudentia adita, efficacis tante, quanta conditorum cupiebat intentio, non esse contingant: concito reformari ipse possunt, at non sine communitatis & procerum regni illius assensu, quali ipsa primitus emanarunt.*

always at hand ; and the whole passage shews for what wise and just reasons they were so.

THE next passage is chap. xliii. fol. 129. 2.  
 " Neither do the laws of England allow in law-suits,  
 " frivolous and fruitless delays. And if in this  
 " kingdom, delays in pleas, which are not to the  
 " purpose, should be used, they may, in every par-  
 " liament, be cut off. Yea, and all other laws used  
 " in the realm, when they *halt* or are defective in any  
 " point, they may, in every parliament, be set to rights  
 " Whereupon it may be rightly concluded, that the  
 " laws of England are the best in the world, either  
 " actually or potentially, since they can easily be  
 " brought into act or being. To the performance  
 " whereof, as often as equity so requires, every  
 " King is bound by an oath solemnly taken at the  
 " time of receiving his crown."

OUT of this last passage I will not trouble you with any more observations than these :

FIRST, That parliaments are the remedy against delays in law proceedings ; but how, if parliaments themselves should be delayed ?

SECONDLY, That if any or all our laws should halt, and our parliaments, at the same time, should be crippled too, and not be able to come together ; they could not help one another.

IN the next and last chapter of that book, fol. 129. b. the prince immediately replies :

" MY lord chancellor, by the tenor of your dis-  
 " course in this dialogue I am thoroughly satisfied,  
 " That the laws of England are not only good, but  
 " the best in the world. And in case any of the  
 " laws want to be mended or improved, the rules of  
 " the English parliaments do instruct us, That that  
 " may be done forthwith. Whereupon, the realm  
 " of England is always governed by the very best  
 " laws, either in reality or in possibility. And be-  
 " sides, I conjecture that the doctrines that have been  
 " held forth in this dialogue, will be very useful to



“ the Kings of England that shall come hereafter ;  
 “ since no body likes to govern by laws which they  
 “ do not like.”

AFTER all these lauds and praises of English laws, which the chancellor has stuck all over with stars quite through his book, and has made their perfection to centre in this, that they either are or soon may be, the best in the world ; because, in case they labour under any defect, that fault may be immediately amended by a wise senate : What if that wise senate be no where to be found, or is at no certainty ? It is then impossible to render the chancellor's Latin into English. For the speedy perfection of the English laws, which the prince and he are agreed is concito & citissime, may be rendered either at the four year's end, or the twelve year's end, or at the world's end. For so I am satisfied it was meant, after a ten year's interval of parliaments, if the herb-woman at Edinburgh had not thrown her cricket-stool at the archbishop's head. And so Dr. HEYLIN, I remember, does not so much acknowledge that secret, as justify it. It is in his little book of observations upon HAMMOND'L'ESTRANGE's history of the reign of K. CHARLES I. Says HAMMOND, Upon the dissolution of that wise parliament in 1628 (to whom we owe the petition of right) all wise men concluded that there was an end of all parliaments. Yes, says HEYLIN, so they might well, the King having been troubled with their impertinences, and having an example in France before his eyes, where parliaments have been so much discontinued, that it is become a proverb amongst them, *Voyons le Jeu de Trois Estats*, as the strangest sight which can be seen in an age. I have not the book now by me, but I will be answerable for the substance of this quotation, having retained this passage in my head above these five and twenty years.

I CAN only touch several other arguments which might be enlarged upon. The high court of parliament is the *dernier ressort* in this kingdom; and if that fail, there may be a failure of the English justice.

BRACTON says of an ambiguous or difficult cause, *Respectuetur ad magnam curiam*; but unless parliaments be frequent, such a cause is adjourned to a long day.

EVERY body that understands the English constitution, knows that it is exactly the same as it was laid down in parliament, 8 EDWARD IV. by the lord chancellor that then was. You have it in Sir ROBERT COTTON's abridgment of the Rolls in the Tower, p. 682. in these words: "He then declared the three estates to comprehend the governance of this land, the pre-eminence whereof, was to the King as chief, the second to the lords and bishops, and the third to the commons." Now if we are at a loss or uncertainty about our parliaments, we are at a loss or uncertainty about two thirds of our government.

BUT I will say no more upon this head, intending to shew in the following chapters, how the matter of parliaments stood in former ages.



## CHAP. II.

Shewing how Parliaments stood in King ALFRED'S time, and afterwards.

**I** CHUSE to begin with this period of time of K. ALFRED'S reign, because we have clear law and history to shew how parliaments stood in his time, and what law was ordained concerning them for ever.

It is in the Mirror of justice, which, as my lord COKE says in his preface to his tenth reports, was written in the Saxon times, and it appears by the book itself: but several things were added to it by a learned and wise lawyer ANDREW HORNE, who lived in the reign of EDWARD I. and EDWARD II. antiquity enough for a book, we desire no more; for we are sure that no commonwealthsman had the penning of it.

“ For the good estate of the realm, King ALFRED  
 “ caused the counties to assemble, and ordained it  
 “ for a perpetual usage, that at two times yearly,  
 “ or oftener if need were, in time of peace, they  
 “ should assemble at London, to sit in parliament, for  
 “ the guidance of God's people, how the nation  
 “ should keep themselves from sin, live in quiet, and  
 “ and receive right by certain usages and holy  
 “ judgments. By this estate were made many or-  
 “ dinances by several Kings, down to the King that  
 “ is now; (which, says the margin, was EDWARD  
 “ the first) which ordinances are disused by some  
 “ that are not so wise, and for want that they are  
 “ not put into writing and published in certain.”

In this passage the two times a year seem to be stationary; the calling a parliament oftener than two times a year, *if need were*, is plainly intended

for contingencies of state, and when the *ardua regni* or extraordinary affairs of the nation required an extraordinary parliament. I say, and will make it out to all the world, by laws and declarations of parliament, that the King has a power of calling parliaments within the law; but I never did, nor ever will say to the end of my life, that the King can hinder parliaments appointed by law. These frequent parliaments were to meet at London in time of peace. We see then what has interrupted our parliaments both as to time and place. For London was after in the hands of the Dane, and foreign wars and tribulations came on.

BUT the best way is to let an author explain himself; which the Mirror does, in telling us likewise the abusions of the law, or the contrarieties and repugnances to right; or, as he calls it, the fraud and force which is put upon law. This way of writing law is the best that can be invented; for it is the way of preaching by positive and negative, which is a two edged sword, and cuts both ways. And the truth of it is the negative part of the law, which lies in a little compass, oftentimes teaches us a world of the positive. For instance, the 33 articles in the roll, 1 HENRY IV. m. 20, which K. RICHARD II. solemnly acknowledged of his own maladministration; do give us more light into the constitution, than a book of six times the bigness could do.

BUT to come to the abusions of law which are in the Mirror, p. 282. he says, That the first and sovereign abusion, is for the King to be beyond the law, whereas he ought to subject to it, as is contained in his oath: though the second is my business, which is in these words.

“ THE second abusion of the law is, that whereas  
 “ parliaments ought to convene for the salvation of  
 “ the souls of trespassers, and this at London, and  
 “ two times in the year, now a-days they meet but



“ seldom, and at the will of the King for aids and  
 “ gatherings of treasure: and whereas ordinance,  
 “ ought to be made by the common assent of the  
 “ King and his counties, now they are made by the  
 “ King and his clerks, and by aliens and others that  
 “ dare not contradict the King, but desire to please  
 “ him, and to counsel him for his own profit, though  
 “ it be not counsel which is convenient for the com-  
 “ mons of the people; without applying to the  
 “ counties, and without following the rules of right:  
 “ whereupon there are several of the present ordi-  
 “ nances that are rather founded upon will, that  
 “ upon right.”

FROM this passage I shall only observe, that the  
 place of a parliament's meeting is fixed, and still at  
 London; and that the two times a-year was standing  
 law down to K. EDWARD I. though abusions and  
 court-practices had broken in upon the law.

Now let us see how the law stood afterwards;  
 wherein I can only consult the books I have by me,  
 for I have not health enough to go and transcribe the  
 records in the Tower, but take them upon content  
 as they lie in Sir ROBERT COTTON's abridgement of  
 the records in the Tower. And, there in the very  
 first page, 5 EDWARD II. it is ordained, *Que parlia-  
 ment serra tenus un ou deux foits per an.* “ That a  
 “ Parliament shall be held one time or two times a-  
 “ year.” Here you see the twice a-year is dwindled  
 into *once or twice*.

THE next is p. 93. of the same book, 36 EDWARD  
 III. “ The print touching the yearly holding of a  
 “ parliament, cap. X. agreeth with the record.”  
 Now the print is, “ Item, For maintenance of the  
 “ said articles and statutes, and redress of divers mis-  
 “ chiefs which daily happen, a parliament shall be  
 “ holden every year, as another time was ordained  
 “ by statute.”

Now that statute, as I find by the statute-book, for I cannot find it in Sir ROBERT COTTON, is thus, 4 EDWARD III. cap. 14. "Item, It is accorded, that a parliament shall be holden every year once, and more often if need be."

By the reason given in 36 EDWARD III. cap. X. just now recited, for a yearly parliament, one would think it should be a daily parliament; because it is for the maintenance of former statutes, and redress of divers mischiefs which daily happen: but I believe that a parliament which sits but forty days in the year are able to do that work; concerning which we will inquire further afterwards.

IN 50 EDWARD III. p. 138. The parliament's demand or petition is this, "That a parliament may be holden every year; the knights of the parliament may be chosen by the whole counties; and that the sheriff may likewise be without brokage in court."

THE King's answer is this, "To the parliament, there are statutes made therefore; to the sheriffs there is answer made; to the knights it is agreed, that they shall be chosen by common consent of every county."

AFTER these three laws in the time of EDWARD III. we come to the first of King RICHARD the second, p. 163, where the petition or demand for a yearly parliament is this: "That a parliament may be yearly holden in convenient place, to redress delays in suits, and to end such cases as the judges doubt of."

THE King's answer is: "It shall be as it hath been used."

IN 2 RICHARD II. p. 173. by the King's commandment one cause of opening the parliament is declared to be this: "Secondly, for that it was enacted that a parliament should yearly be holden."



NAY, if the court insist upon a yearly parliament, the country may and ought.

THUS stood the law of England till 16 CAROLI I. when that King having discontinued parliaments for twelve years and created a distrust of him in the breasts of his people, which was just; (for if a prince spoil the government for twelve years together, who shall trust him in the thirteenth?) the nation found a necessity of having a cautionary parliament every third year, to secure their annual parliaments for the two years immediately foregoing. This is the true reason of the act for a triennial parliament, which was a perfect innovation both name and thing. For I challenge any antiquary, lawyer, or person whatsoever that has turned over books, to shew me the word triennial joined to the word parliament, from the foundation of this government till the year 1640. A triennial parliament therefore is so far from being the constitution of this government, that if it were so, the constitution is not so antient as has been supposed but first drew its breath under CHARLES I. But as I said before, that act was only a cautionary act, as a town or gate of a city is taken in caution, for performance of articles. This appears by the first thing which is enacted in that law, namely, *That the laws for a parliament to be holden at least once a year, shall hereafter be duly kept and observed.* SCOBEL's collect. 16 Car. I. cap. i.

This act was gently drawn up, and had more of a prospect than a retrospect, and does not look back into those oppressions which King CHARLES himself in his large declaration of August the 12th does acknowledge were insupportable; which were wholly owing to this long intermission of parliaments: but it wisely provides, that in case the two first years parliaments should fail, then come a peremptory parliament, which the King and keeper might call

if they pleased; but if they did not, the counties and boroughs of England were forced to send.

AFTER this comes the act 16 CAR. II. cap. i. and repeals this triennial act, because they say, "It is in derogation of his majesty's just rights and prerogative, inherent to the imperial crown of this realem, for the calling and assembling of parliaments;" whereupon the triennial act is annulled as if it had never been made.

I WISH it had never been made: but we will stop there first. It is annulled as if it had never been made. There is nothing lost by that; for then our parliaments are where they were, which was due annual.

WELL, now let us see what alteration is made by this new act, 16 CAR. II. which follow in these words, sect. 3. "And because by the antient laws and statutes of this realem, made in the reign of King EDWARD III\*, parliaments are to be held very often (that is, one or twice a year) therefore they shall not be discontinued above three years at the most." I do not use to admire consequences which I do not understand. But, under favour, I would be taken right. I say, that the recital of the antient laws of this realm does not repeal them *unneantir*, any thing, nothing; when there is not one *repealing* word concerning them in that statute.

I KNEW what I said when I wished the triennial bill of 1640 had never been made; and it must be remembered that that act is as if it had never been made; for it gave occasion to some men that came in with the deluge of the restoration, when it rained cavaliers (though I value all mens rights more than my own, and princes most because they are biggest) and it prompted them to think of turning a cautionary triennial, into a discretionary. But, God be thanked! they wanted words to express themselves; and if they meant it, they have not done it.

\* 4 Edward III. cap. XIV.

36 Edward III. cap. X.



BUT so as they did put the act together, and as it now stands, there are several things in it worth observing. 1st. That *if there be occasion there shall be more and oftener* parliaments than once in three years. Now I ask for whose sake was that clause enacted? Not for the King's, for he was always enabled by his prerogative, for the sake of the *ardua regni*, to to call a parliament every month in the year. Well then, it was for the sake of his people, that if they judged *there was occasion for more or oftener* parliaments, they might ask for them. For I appeal to common sense, whether it be not ridiculous, and wonderfully beneath the dignity of a parliament, when a prince was bound by his coronation-oath to call a parliament once a year, or oftener if need were (for so the law stood, and so this prince was at that time bound) to interpret a law after such a manner, as to say he was enabled to call a parliament oftener than once in three years.

So much for that point; the next is this. The upshot of this act of parliament, and the conclusion of the whole act is in these words: "To the end  
" there may be a frequent calling, assembling, and  
" holding of parliaments once in three years at the  
" least." I do say, that if ever we came to low-water mark in our laws about parliaments, and if ever they run dregs, it was in the time of King CHARLES II. And yet it was enacted, and was the end of that law, that one should be called once in three years at the least. Now I leave it to the lawyers to tell, whether a proclamation can call a parliament, or any thing else besides a writ of summons and a writ for elections.

AND thus have I run through the law of parliaments till the other day, and considered what is the law at present. From K. ALFRED's time down to EDWARD I. it seems to have been the standing law to have parliaments twice a year. I know that the invasions of several nations, both Danes and Nor-

mans, and the revolutions and disturbances of state which happen, must needs cause frequent interruptions in the practice of it. But my reason to be of that opinion is this, because HORNE, who lived in those times, says that parliaments at that time ought to meet twice a year, and that at London; and that the intermitting of parliaments was the greatest abusion of the law but one: though I think I have have still a greater authority than HORNE'S (if any thing in this world can be bigger than that of an able and an honest man) but it is a King, in his letter to the pope; it is in the clause rolls anno 3 EDWARD I. m. 9. *scedula*, and is to be seen in PRYNN'S large book, p. 158. I will quote no more of it than is for my purpose; it is concerning the yearly tribute of a thousand marks, which the popes from K. JOHN'S time claimed, and there were several years due. The pope's nuncio solicits the matter, but the King excuses himself that he had come to no resolution in his Easter parliament, but by common advice he would give him an answer in his Michaelmas parliament next following. At present I only mind the wording and way of expressing these two parliaments. Concerning the first he says, *In parlamento quod circa octabas resurrectionis Dominice celebrari in Anglia consuevit*: "In a parliament that used to be held in England about the octaves of "Easter." That word *consuevit* emounts to custom and usage, and seems to express a parliament *de more*. He says, that the parliament was in *octabis*, and by occasion of his sickness (after they had made several good laws and redressed many grievances, but not all that lay before them) for the reason aforesaid, that parliament was dissolved, and the King could not treat with them about the pope's petition of tribute. But he promises to do the pope reason in his Michaelmas parliament which he intended.



“ KNOW for certain, pious father and lord, that  
“ in another parliament of our's, which we intend  
“ to hold at Michaelmas next ensuing, with God's  
“ leave; we, and the prelates, and peers aforesaid,  
“ consulting together, according to their advice will  
“ give you an answer upon the premises.”

BUT I will say no more upon this head, being in-  
tent upon another.

## C H A P. III.

Shewing that the yearly parliaments were fresh and fresh.

**T**HERE are several ways of proving that there was a new election every year. They tell me, there are writs extant for new elections four-score years successively, where there are about six wanting. What if they had been all lost, embezzled, or made away? What then, is our constitution lost, when bundles of writs are lost? No, I will go no further than this last letter, to shew that there is a great appearance, that while there were two parliaments in a year, the second must be new called. Though I hate the word new, applied to a parliament; for a parliament is a parliament, and our ancestors would no more have dreamed of a stale or old parliament, than of an old moon cut out into stars. I will cite the words of King EDWARD's letter, dated the 19th of June, in the third of his reign; and when that is done, let the reader make his own judgment upon them.

It was in the interval betwixt his Easter and his Michaelmas parliament. " But before we could put an  
 " end to that parliament, because of the multitude of  
 " grievances which lay before them, your nuncio in the  
 " mean time, diligently soliciting your business, a  
 " great distemper, as it pleased God, besel me,  
 " which hindered the finishing of many other mat-  
 " ters, and treating about the petition of the yearly  
 " tribute, which is a great grief to me: and so by  
 " reason of my said illness (from which by the grace  
 " of God, in whose hands are the issues of life and  
 " death, I begin to recover) that parliament was



" dissolved, and hereupon I could not treat with the  
 " prelates and peers afore said, about this tribute."

FROM this long quotation, I shall only make this  
 obliervation at present, That in this parliament be-  
 gun in the octaves of Easter [perhaps upon May-  
 day] there was a great deal of business done, and a great  
 deal of business left undone; amongst the rest the pope's,  
 because of the King's sickness, who thereupon could  
 not give answers to bills or petitions; and that the  
 nuncio's petition was unanswered went to the King's  
 heart. But upon occasion of that sickness it was,  
 that the parliament was dissolved, and the pope's  
 business hindered, to the King's great regret. What,  
 could not the King keep his parliament alive till the  
 nineteenth of June, when he himself began to be  
 well again, which is the date of the letter? It is  
 no more than fifty days from their first setting down  
 to the date of this letter; and yet, though he set his  
 heart upon the business that lay before that parlia-  
 ment, it was dissolved; and to stop this gap, he  
 promises to call another parliament at Michaelmas.  
 Then it seems they did not understand the method  
 of prorogations, and it is unknown to me by what  
 law it came in. If there be such a law, I never  
 minded it; for I am speaking of the constitution,  
 and not of innovations.

BUT I believe the true reason of the abrupt dis-  
 solution of that summer parliament, in conjunction  
 with the King's sickness, was this, That if they had  
 been held till Michaelmas, though there was then to  
 be another parliament, it must have been at the  
 King's charge. For I am of opinion, by what I  
 have seen even as low as RICHARD the second's time,  
 that the sitting of a parliament was usually forty  
 Days; and that the quarantain was not duly kept  
 in this parliament, 3 EDWARD I. of the octaves of  
 Easter. But there was a concern in holding a par-  
 liament above forty days about the knights' and

burgesses' wages ; - as appears by that memorable record which is in KNYGHTON, p. 2682. being the message sent by both houses to King RICHARD the second at Eltham\*.

IN short, they say they have an antient statute for it, that in case the King wilfully absent himself, and will not come to parliament, as having no care of vexing his people, nor regard of their great expences, after forty days they are free to go home, and the King has no wrong done him.

Now what is the meaning of these forty days, but that they had waited a just session? And how should the parliament-mens' wages be otherwise adjusted, when at the end of every parliament in those times they were dismissed, with desiring them to sue out their writs for their wages? And I leave it to the antiquaries, because I am not now able to travel in that point, to consider how the several proportions of land which are allotted for the knights and burgesses in several counties for their wages, can be adjusted without a certainty of the length of their sessions.

BUT not a word of this is my present business, which was to shew, that parliaments by the constitution are not to be stale; as in a former reign one was retained about nineteen years with pensions, and another for fewer years, with places and turning out of places: but if a parliament were corrupted neither of these ways, yet a standing parliament will always stagnate, and be like a country-pond which is over-grown with ducks-meat. The worst King, or at least, one of them that

\* The words are these : *Dicunt etiam quod habent ex antiquo statuto, quod si Rex a parlamento suo se alienaverit sua sponte, non aliqua infirmitate aut aliqua alia de causa necessitatis, set per immoderatam voluntatem proterve se subtraxerit per absentiam temporis 40 dierum, tanquam de vexatione populi, sui & gravibus expensis eorum non curans extunc licitum omnibus & singulis eorum absque domigerio Regis redire ad propria & unicuique eorum in patriam suam remeare.*



ever the nation had, was so limited by the constitution, that he did not know how to compass a long parliament, and therefore he was fain to take other indirect ways to gain the same point as if he had one. It was RICHARD the second; who, in the articles alledged against him, and confessed by him, lets us know it was by influencing elections and false returns. The words as they stand in the rolls, 1 HENRY IV. m. 20. are these :

“ 19. *Item*, It is allowed by statute, and the  
 “ custom of his realm in the calling of every parlia-  
 “ ment, in the counties of England, his people ought  
 “ to be free to chuse and depute knights for the  
 “ said counties to be present in parliament, to lay  
 “ open their grievances, and to prosecute for re-  
 “ medies thereupon as they think fit; notwithstand-  
 “ ing, the said King, that in his parliaments he might  
 “ obtain his will which was rash, often directed his  
 “ mandates to his sheriffs, that they should return  
 “ certain persons nominated by the King himself as  
 “ knights of the shires; which knights indeed he  
 “ could make pliable to him, and as he very often  
 “ did, sometimes by various threats and terrors,  
 “ and sometimes by gifts, to consent to those things  
 “ which were prejudicial to the realm, and extreme-  
 “ ly burdensome to the people; and particularly  
 “ to grant the same King the subsidy of wool dur-  
 “ ing his life, and another subsidy for certain years,  
 “ thereby too much oppressing his people.”

Now if he could have made long parliaments, he need not have made use of these mean shifts. But he could make use of no other way, because parliaments, as I said, were fresh and fresh, and antiquity knew no other. And if any man can make out of this authentic record, that it was any otherwise *than so many parliaments, so many elections*; then I have done with writing and reading.

## C H A P IV.

Of the kalends of May.

**A**T last I am come to search after the head of Nile, and the true old land-mark of the English Constitution. How parliaments stood in the British times I am not certain, but that there were parliaments then I am certain. I have it from the wise GILDAS, that VORTIGERN and his foolish thaynes sent to the Saxons for help against the Picts and Scots, and took into their bosoms a warlike and fierce nation, whom at a distance they were afraid of. And they indeed of course beat those that infested Severus's wall, but they made mine hosts that invited them in, hewers of wood and drawers of water. And those of the Britons that opposed them, the Saxons drove out of their country, whereby, as GILDAS says, all their records were lost. But out of that venerable author we plainly see, that the lamentable letter, which was sent some few years before to the senate of Rome, was written by a British parliament. For whose sake I beg of all nations not to let in legions of foreign nations to be their masters; for when they want them and their protection most, they shall go without it. For when the Roman legions were withdrawn out of Britain (which caused our enemies to make an insult) and the British parliament begged hard that they should return, the Roman senate's answer was, that they were otherwise engaged; and they must help themselves as they could, which made them betake themselves to the Saxons. A very fair answer to a nation that was disabled and disarmed, after their Kings and parliaments had been only tax-gatherers to the Romans for several hundreds of years;



as, if you have no true Lord Mayor, you must still have pageants, and somewhat that keeps up the show.

BUT after these early times, we have somewhat in King EDWARD the Confessor's laws, which all succeeding Kings have been sworn to, which I will try what to make of. It is a yearly folk-mote upon the kalends of May. I do not know readily what that yearly folk-mote is, because those laws of EDWARD the Confessor say that King ARTHUR invented it; *Quod Arturus Rex inclytus Britonum invenit*. Then I am sure the original name of it was not folk-mote. So we will mind the name no more, but come to the thing.

SIR HENRY SPELMAN, in the most learned glossary that ever was written, I will not except Mr SOMNER's, says thus under the word *Gemotum*; "A wettenagemote was the same thing amongst the English Saxons, as now at this day a parliament is amongst us; and a wittenagemote differed little from a folk-mote, only that this last was annual, and chiefly sat about the standing affairs of the nation." The other was called at the King's pleasure upon emergencies of state, and for the sake of making laws.

Now let us see what the learned antiquary says concerning folk-motes by themselves in the same place, p. 315, "In a folk-mote once every year at the beginning of the kalends of May (as in a yearly parliament) there met together the princes of the realm, as well bishops as magistrates, and the free-men. All the laymen are sworn in the presence of the bishops into a mutual covenant with one another, into their fealty to the King, and to preserve the rights of the kingdom. They consult of the common safety, of peace; of war, and of promoting the public profit."

It follows in the next words, "Besides, a folk-mote is used in every sudden danger, and likewise

" if necessity require it, under the alderman (that is, the earl) of every county."

THIS last is plainly a provincial Folkmote in time of necessity: but the former part of the sentence seems to intimate, that upon a surprize, when the King had not time to call a parliament, the last Folkmote met; as the last Westminster parliament did, to give the prince of Orange the administration, before it was possible to have a parliament elected.

THOUGH the former description of the general and not the provincial Folkmote is our present business. And at first sight it looks like a full parliament, for it consists of the *princes, as well bishops as magistrates, and the freemen*; that is to say, the chiefs of the whole nation. And they are employed in parliament work, for *they consult of the common safety, of peace, of war, and promoting the public profit*. And did not the general title of our laws every session run thus; To the high honour of God, and to the profit of the commonwealth? If ever there were wites in parliament, sure they were *princes, as well bishops as magistrates, and the freemen*. Why then does this learned knight distinguish betwixt a Wittenagemote and a Folkmote, seeing they were both made up of wites? I am governed by things and not by words, and am thoroughly satisfied that an assembly which does parliament business is a parliament. And no doubt the folkmote made laws; for it is not to be supposed that an assembly of the whole nation should sit consulting forty days of peace and war, of armies and fleets (which in those days were three thousand ships, and were able to make out the dominion of the seas) of the grievances of the nation, and the redress of those grievances; and of providing for the common profit of the realm; and after all not be able to enact their own conclusions. That is just as if our present parliament should spend forty days in finding out ways and means for the raising money, and afterwards were



not able to put them into a law : or as we private men use to consult, and debate, and settle the nation over a dish of coffee, without being able to oblige one single man to obey our orders.

THE thing which misled the great antiquary (as I conjecture) to make this mark of difference betwixt a Folkmote and a Wittenagemote, as if a Wittenagemote made laws, and a Folkmote not, is this ; That when the Saxon Kings issued out their laws, they said they had passed in their Wittenagemote, *concilio sapientum*, or council of wise men : and it was proper for the King to call his Folkmote by that name, though not for themselves. As for instance, the writs of election at this day call for some of the discreetest to be chosen to parliament, though the members do not assume that title : and I know so much of the old English genius, that they would no more have called themselves a Wittenagemote, than this present parliament would call their votes, which come out day by day, *Journal des Seavans*.

BUT I will wave conjectures, even in antiquities, (though we are there oftentimes forced to go in the dark, to tread upon ruins, and to feel out our way ;) because I have direct proof that the Folkmote made all the laws we ever had. And for this I will go no further than to the third branch of the usual and accustomed coronation-oath, taken by the former Kings of England, and taken twice by RICHARD II\*.

“ Do you grant that the just laws and customs,  
 “ which are of the Folks chusing, shall be kept, and  
 “ do you promise that they shall be protected, and,  
 “ to the honour of GOD, receive affirmance by you,  
 “ to the utmost of your power ? The King shall an-  
 “ swer, I grant and promise.”

\* 1 Hen. IV. membr. 20 *inter Decem Scriptores*, p. 2746. in these words, spoken to the King by way of question.

Now I would fain know how a Folkmote can be otherwise expressed in Latin than by the word *Vul-gus*, which is a collective word: or how the *Vul-gus* or Folk could chuse laws any otherwise than in a Folkmote?

I WILL not enter into the stiff dispute which exercised K. CHARLES I. and his parliaments for a long time, whether the word was *præter tense* or *future*, and whether the word was best rendered in the French translations, the laws which the Folk *auront* *estéu*, shall have chosen, or which the Folk *eslieront* shall hereafter chuse; whereupon they said, that he was bound to sign and affirm all the laws they should hereafter present to him, and that he could not make use of a negative without perjury. I say, that that whole dispute was not worth a farthing. For if the Folk chose the laws all along down to King RICHARD the second's time, and the Kings were sworn to affirm them, then we know how the laws antiently were made; and who cares whether *eslieront*, or chusing for the future, be the sense of the word or no? For if the Folks chusing was the constitution in King RICHARD the second's time, then I would fain know in what King's reign it was afterwards, that the constitution was altered.

In short, the Folk chose the laws; and I believe the English Folkmote and Wittenagemote will be found to be old HOMER's river,

"Ὅν Ξάνθον καλέουσι θεοί, θνητοὶ δὲ Σκαμάνδρον,

"which the gods call *Xanthus*, but mortal men, "*Scamander*." Now, though *Scamander* be the homelier name, yet it is the same river.

I CANNOT but say there was some difference betwixt the Folkmote upon the kalends of May, and the Folkmotes which the King always called for his *ardue contingentia*, or contingencies of state: but the difference lay only in this, that the Folkmote of the



kalends of May was a parliament *de more*, and of course, when assembled themselves, *sub initio kalendarum Maii*, says SPELMAN, and were bound to do so, *in capite kal. Maii*, say the laws of EDWARD the confessor, cap. xxxv. *de greve*; (and out of that chapter has Sir HENRY SPELMAN extracted his true account of a general Folkmote, which was anniversary) whereas, a Wittenagemote or extraordinary parliament or Folkmote was summoned at the King's pleasure, and was ever at his call both for time and place. Other difference I can find none. For as for the constituent parts of a Folkmote, if *the princes of the realm, as well bishops as magistrates, and the freemen*, cannot denominate a Wittenagemore, I know not where the King will find his wits, or wise-men. I have spoken to that point already. I have likewise spoken to the point of the Folkmotes making of laws. We find, indeed, the Saxon Kings in the preface to their laws which were made in extraordinary parliaments, decreeing with their wites, some at Greatanlaga, and at Midwinter, afterwards at Excester, as King ATHELSTAN; some at Lundenbrig, at the holy Easterly tide, as King EDMUND; others at Wodestock in Mercialand, and others at Winchester. Whereby it appears that the Kings of England had a power to summon parliaments when and where their weighty affairs required them, in all places of the realm, and at all seasons of the year. This is an undoubted prerogative lodged in the King for the sake of the *ardua contingentia*; and no man would govern a kingdom that could not command the advice and assistance of his subjects to be forth-coming, when the occasions of the kingdom required it. And for the sake of these *ardua negotia*, the knights, citizens, and burgeses are to be impowered to act in parliament-business by those that sent them; lest, for want of that full and sufficient power, or by no means of an improvident election, these arduous and weighty

affairs of the kingdom should, in any wise, remain infecta, or be left undone. This is contained in the present writ of elections directed to every sheriff of a county at every election of parliament-men.

BUT that is not my present business; for I am in a further seach after the annual, or rather the anniversary Folkmote.



## C H A P. V.

Concerning the first Founder of the Yearly Folk-mote of the Kalends of May.

**B**EFORE I proceed any further, I must clear one point: and that is, that we find the author and founder of our yearly Folkmote mentioned in the laws of EDWARD the Confessor, (which were recited and confirmed by K. WILLIAM I.) under the title *de greve*, chap. xxxv. which may possibly leave a suspicion, that this yearly Folkmote of the Kalends of May was a greve's court. Now what court should this be belonging to a greve, or any count or viscount, or president whatsoever; for greve is an ambiguous word? It is not a Burghmote, for that is three times a-year by the Saxon laws. It is not a county-court; for that, by EDWARD the senior's laws, N. II. was in these words: "I will that each greve have a gemot at about four weeks." So that there were twelve in the year. It was not the sheriff's turn, or *le turne del vicount*; for that was twice a-year, by the laws of King EDGAR, cap. v. it is not the gemot for the view of weapons or arms, which every freeman in England was charged with, and was bound to shew once every year, and, as was wisely contrived, all in one day throughout all England; but that day was not in our kalends of May, but the morrow after Candlemass, *Crastino Purificationis B. M.* And therefore I cannot, for my life, make any thing else of an universal anniversary full Folkmote, which is but *semel in anno, scilicet in capite kal. Maii*, but a stationary parliament: especially considering who they were, and what they did.

THE next thing to be considered, is the author or founder of this ancient custom. we have

in the aforefaid chap. *de greve*, num. 35. amongst the laws of good King EDWARD.

“ This law of the anniverfary Folkmote ARTHUR, “ invented, who was heretofore the moft renowned “ King of the Britons, and thereby he consolidated “ and confederated together the whole realm of Br. “ tany for ever as one.”

It is good to honour the founders of all useful constitutions; and I believe that King ARTHUR was the inventor of this as to this realm, becaufe thefe laws of King EDWARD fay fo: and fo was CADMUS, the inventor of letters in Greece, though we can trace them out of Phœnicia; and the letters fpeak for themfelves. For if it be Aleph, Beth, Gimel, Dath in one place, and in the fame order it is Alpha, Beta, Gamma, Delta in the other place; then we are fure there has been an underftanding and communication. For it is impoffible to be otherwife, when the alphabets are fettled on both fides, by being the numeral letters; as it was plainly in King DAVID’S time by the octonaries of the 119th Pfalm, as it ftands in the middle of the Bible; and as it was in HOMER’S time in Greece: or elfe the old fcholiafts have deceived me, who fay that HOMER purpofely couched the number of all his books in the firft words of his Iliads Μῆνιν ἄειδε Δία; which numerals ftand for 48. The Greeks likewife taught the Welch to tell twenty, and I believe they taught the Romans too. Now by the fame rule, if there was a very antient Folkmote in the neighbouring kingdom of France upon every kalends of May, then, perhaps, King ARTHUR borrowed from them; and it is good to look upon their kalends, becaufe it is poffible they may give light to our’s.

THE French kalends of May lie thus in RADULPHUS DE DICETO, the famous dean of St. Paul’s in K. JOHN’S time, whofe hiftory was thought fo authentic, that the Englifh parliament, in EDWARD the



Arst's time, relied upon his testimony, amongst some others, in no less a point than the claim of the King of England to the supreme dominion of the realm of Scotland\*.

I WILL render the sense of it into English as near as I can; however, the Latin lies before every man to translate it for himself. "From hence-forward  
 " the French kings degenerating from the valour  
 " and learning which they used to have, the power  
 " of the kingdom was administered by the masters  
 " of the palace, the Kings themselves being upon the  
 " matter only titular; whose custom it was to come  
 " to the crown indeed, according to their descent,  
 " and neither to act nor order any thing, but to eat  
 " and drink unconscionably, and to live at home;  
 " and upon the kalends of May to preside in an as-  
 " sembly of the whole nation, and there to be ad-  
 " dressed, to receive their allegiances, and aids or be-  
 " nevolences, and to remercy them, and so to retire  
 " to the same life again till another May came."

THIS French kalends of May, is so much a picture of our's, that I know not which is the copy, nor which the original. Their's was an assembly of the whole nation, so was our's: annual and anniversary, so was our's. It was *tota gens kal. Maii*, in France: our Folkmote looks extremely like it in those two strokes; *Statutum est enim quod ibi debent populi omnes, & gentes universæ singulis annis, semel in anno scilicet convenire, scilicet in capite kal. Maii†.*

\* As to our present business, he has these words, *abbreviat, chronicorum*, page 439. *Abbinè Francorum regibus a solita fortitudine & scientia degenerantibus, regni potentia disponebatur per majores domus, regibus solo nomine regnantibus; quibus moris erat principari quidem secundum genus, & nil agere vel disponere præterquam irrationabiliter edere & bibere domique morari, & kal. Maii præsidere coram tota gente & salutari, obsequia & dona accipere & rependere, & sic secum usque ad ali- um Maium permanere.*

† L. L. Edw. Conf. cap. 35. de Greve.

For it was appointed by statute, that all the people and counties, universal, should meet together at the Folk-mote each year, namely, once in the year, to wit, in the beginning of the kalends of May. The King used to have fine speeches made to him in France; so had we. They swore allegiance to him; so did our Folk. They gave him gifts, (it was not New-yaer's tide) aids, benevolences, call them what you will; and our people at the same time, as Sir HENRY SPELMAN said above, *consulted of peace and war*: which cannot be managed without ways and means of raising money, which is the finew of war, as laws are of the peace. The word *rependere* at last in the French kalends looks so like our French form of the royal assent given to a money-bill, *le Roi remercie ses loyal subjects*, that I knew not now to render the word *rependere* any otherwise than I did, by the word *remercie*.

I KNOW that the year 662 was below King ARTHUR's time; but it appears, that when the French government was utterly spoiled in the Merovingian family, as to the other points, still they retained the old custom of the kalends of May; so that it was of much greater standing.



B

S

W

THE  
DECLARATION  
OF THE  
ESTATES  
OF THE  
KINGDOM OF SCOTLAND,

(CONTAINING THE CLAIM OF RIGHT),  
AND THE  
OFFER OF THE CROWN TO THEIR MAJESTIES,  
KING WILLIAM AND QUEEN MARY.

APRIL 11th. 1689.

WHEREAS, King *James* the Seventh, being a profest Papist, did assume the Regal power, and acted as King, without ever taking the Oath required by Law, whereby the King at his access to the Government, is obliged to swear, to maintain the Protestant Religion, and to rule the People according to the laudable Laws; And did by the advice of wicked and evil counsellors, invade the fundamental Constitution of this Kingdom, and altered it from a Legal *limited* Monarchy, to an arbitrary Dispotic power; and in a public proclamation, asserted an absoluted power, to cass, and disable all the Laws, particularly arraigning the Laws,



establiſhing the Proteſtant Religion ; and did exerciſe that power to the ſubverſion of the Proteſtant Religion, and to the violation of the Laws and Liberties of the Kingdom.

By erecting public ſchools and ſocieties of the *Jeſuits*, and, not only allowing *Maſs* to be publiely ſaid, but alſo inverting Proteſtant chappels and churches to *Maſs-houſes*, contrary to the expreſs Laws, againſt ſaying and hearing of *Maſs*. By allowing *Popiſh-books* to be printed and diſperſed, by a gift to a Popiſh printer ; diſigning him printer to his Majesties Houſehold, College, and Chappel, contrary to the Laws.

By taking the children of Proteſtant noblemen and gentlemen, ſending and keeping them abroad to be bred popiſts, by making great funds and donations to popiſh Schools, and Colleges abroad, beſtowing penſions upon Priests, and perverting Proteſtants from their religions, by offers of places, preferments and penſions.

By diſarming Proteſtants, while at the ſame time he employed *Papiſts*, in the places of greateſt truſt, Civil and Military ; ſuch as, Chancellor, Secretaries, Privy Counſellors, and Lords of Seſſion, thruſting out Proteſtants to make room for *Papiſts*, and intruſting the Forts and Magazines of the Kingdom, in their hands.

By impoſing Oaths, contrary to Law.

By giving Gifts and Grants for exacting money, without conſent of Parliament, CONVENTION of the Eſtates.

By levying or keeping on foot, a ſtanding army in time of Peace, without conſent of Parliament, which army did exact Locality, free and dry Quarters.

By employing officers of the army as Judges through the Kingdom, and impoſing them where there were hierretale offices and Jurisdiction, by whom

many of the Leidges were put to Death, summarly without legal tryal, Jury or Record.

BY imposing exorbitant Fines, to the value of the parties estates; Exacting *extravagant* bale; and disposing Fines and Forfaitures, before, and Procces or Conviction.

BY imprisoning persons without expressing the reason, and delaying to put them to Trail.

By causing pursue, and forefault several persons upon streaches of old and obssolute Laws, upon frivolous and weak pretences, upon lame and defective probations; As particularly the late Earl of *Argyle*, to the scandle and reproach of the Justice of the Nation.

BY subverting the right of Royal Burghs, the third Estate of Parliament, imposing upon them, not only Magestrates, but also the whole Town Council, and Clerks, contrair to their liberties, and express Charters, without the pretence, either of sentence, surrender or consent. So that the Commissioners to Parliaments being chosen by the Magestrates and Council, the King might as well nominate that intire estate of Parliament. And many of the said Magestrates put in by him were avowed *Papist*, and the Burghs were forced to pay money for the Letters, imposing these illegal Magestrates and Councils upon them.

BY sending letters to the chief Court of Justice, not only ordaining the Judge to stop and desist, *sine die*, to determine causes, but also ordering and commanding them, how to proceed, in cases depending before them, contrary to the express Laws, and by changing the nature of the Judges gifts, *ad vitam ant culpam*, and giving them commissions *ad bene placitum*, to dispose them to compliance with arbitrary courses, and turning them out of their offices when they did not comply.



BY granting personal protections for civil debts contrary to Law.

ALL which are utterly and directly contrary to the known Laws, Statutes and Freedom of this Realm.

THEREFORE the Estates of the Kingdom of *Scotland* find and declare, that K. James the seventh being a profest Papist did assume the Royal power, and acted as King, without ever taking the Oath required by Law, and hath by the advice of evil and wicked counsellors, invaded the Fundamental Constitution of the Kingdom, and altered it from a legal limited Monarchy, to an arbitrary Despotic power, and hath excised the same, to the subversion of the Protestants Religion and the violation of the Laws and Liberties of the Kingdom, inverting all the ends of Government; whereby he hath forefaulted all Right to the Crown, and the THRONE, is become VACANT.

AND, whereas, his Royal Highness, *William* the Prince of Orange, now King of *England*, whom it hath pleased Almighty God to make the glorious instrument of delivering these Kingdoms from Popery and arbitrary power, did, by the advice of several Lords and Gentlemen of the Nation, at *London*, for the time, call the Estates of this Kingdom to meet the 14th of *March* last, in order to such an establishment, as, that their Religion, Laws, and Liberties might not be again in danger of being subverted; and the said Estates being now assembled, in a full and free representative of this Nation, taking into their most serious consideration, the best means for obtaining the ends aforesaid, Do; in the first place, As their ancestors in the like cases have usually done, for the vindicating and asserting their ancient Rights and Liberties, declare.

THAT by the Law of this Kingdom, no Papist can be King or Queen of this Realm, nor bear any office whatsoever therein; nor can any Protestant suc-

cessor exercise the Royal power, until he or she swear the Coronation oath.

THAT all proclamations asserting an absolute power to Cas, annul, or disable the Laws, the erecting schools and colleges for *Jesuites*, the inverting Protestant chapels and churches, to public Mass-houses, and the allowing Mass to be said, are contrary to Law.

THAT allowing Popish books to be printed and dispersed, is contrary to Law.

THAT the taking the children of Nobleman Gentlemen, and others, sending and keeping them abroad to be bred Papists, the making funds and dotations to Popish schools and colleges, the bestowing pensions on priests, and perverting Protestants from their religion, by offers of places, preferments and pensions, are contrary to Law.

THAT the disarming Protestants, and employing Papists in the places of greatest trust, both civil and military, the thrusting out Protestants to make room for Papists, and the entrusting Papists, with the forts and magazines of the Kingdom, are contrary to Law.

THAT the imposing oaths, without the authority of Parliament, is contrary to Law.

THAT the giving gifts and grants for raising Money without the consent of Parliament or *Convention* of Estates, is contrary to Law.

THAT the employing officers in the army, as judges through the Kingdom, or imposing them when there were heiretable offices and jurisdictions, and the putting the Leidges to death, summarly without legal tryal, jury or record, is contrary to Law.

THAT imposing extraordinary, fines and exacting of extraordinary bale, and disposing of fines or forfeitures before sentence, are contrary to Law.

THAT the imprisoning persons, without expres-



fining the reason thereof, and delaying to put them to trial, is contrary to Law.

THAT the causing, pursue, and forfiet persons, upon stretches of old and obsolete laws, upon frivolous and weak pretences, upon lame and defective probation, as particularly the late Earl of *Argyle*, is contrary to Law.

THAT the nominating and imposing Magistrates, Councils, and Clerks, upon burghs, contrair to their Liberties, and exprefs Charters, is contrary to Law.

THAT sending letters to the Courts of Justice, ordaining the Judges to stop, or desist from determining causes, and ordaining how to proceed to causes depending before them, and the changing the nature of the Judges gifts, *ad mitam aut culpam*, into commissions, *durante beneplacite*, are contrary to Law.

THAT the granting personal protections for civil debt, is contrary to Law.

THAT the forcing of the Ledges to depone against themselves, in CAPITAL CRIMES, however, the punishment be restricted, is contrary to Law.

THAT the using Torture without evidence, or in ordinary crimes, is contrary to Law.

THAT the sending of an Army in an hostile manner, upon any part of the Kingdom in a peaceable time, and exacting of Locality, and any manner of free quarters, is contrary to Law.

THAT the Leidges with law-borrows, at the King's instance, and the imposing of bonds without the authority of Parliament, and the suspending Advocates from their employment, for not compearing when such bonds were offered, were contrary to Law.

THAT puting of Garrisons in private mens houses in time of peace, without their consent, or the authority of Parliament, is contrary to Law.

**THAT** the opinions of the Lords of Session in the two cases following, were contrary to Law, viz. 1<sup>st</sup>, That the concealing the demand for a supply for a forefaulted persons, although not given, is Treason. 2<sup>d</sup>, That persons refusing to discover what are their private thoughts and judgements, in the relation to points of Treason, or other mens actions, are guilty of Treason.

**THAT** the fying husbands for their wives withdrawing from the church, was contrary to Law.

**THAT** Prelacy and the superiority of any office in the church, above presbyters, is, and hath been a great and insupportable grievance and trouble to this Nation, and contrary to the inclinations of the generality of the people, ever since the Reformation, (they having reformed from Popery by presbyters) and therefore ought to be abolished.

**THAT** it is the Right and Prevelege of the Subjects, to protest for remeid of Law to the King and Parliament, against Sentences pronounced by the Lords of Session, providing the same do not stop the execution of these Sentences.

**THAT IT IS THE RIGHT OF THE SUBJECTS TO PETITION THE KING, AND THAT ALL IMPRISONMENTS AND PROSECTIONS FOR SUCH PETITIONING, ARE CONTRARY TO LAW.**

**THAT** for Redress of all Greivances, and for the amending, strengthening, and preserving of the Laws, parliaments, ought to be frequently called, and allowed to sit, and the freedom Speech and Debate allowed to the Members.

**AND** they do Claim, Demand, and insist upon all and sundry, the premises as their UNDOUBTED RIGHTS and LIBERTIES, and that no declarations, doings or proceedings, to the prejudice of the people, in any of the said premices, ought by any-wise to be drawn hereafter, in consequence or example, but that all forfeitures, fines, loss of offices, imprisonments, ba-



instruments, pursuits, persecutions, tortures, and rigorous executions, be considered, and the parties lesse'd, be redress'd.

To which demand of the *Rights*, and redressing of their *Grievances*, they are particularly encouraged by his Majesty the King of England, his Declaration for the Kingdom of Scotland, of the day of October last; as being the only means for obtaining a full redress and remedy therein.

HAVING therefore an entire confidence, that his said Majesty, the King of England, will perfect the deliverance, so far advanced by him, and will preserve them from the violation of their Rights, which they have here asserted, and from all other attempts upon their Religion, Laws, and Liberties.

THE said estates of the Kingdom of Scotland, and that do resolve, that William and Mary, King and Queen of England, and Ireland, be, and be declared King and Queen of Scotland, to hold the Crown and Royal dignity of the said Kingdom of Scotland, to them, the said K. and Q. during their lives, and the longest liver of them, and that the sole and full exercise of the Royal power, be only in, and exercised by him, the said K. in the name, names, of the said K. and Q. during their joint lives, and after their death, deceasement, the said Crown and Royal dignity of the said Kingdom, to be to the Heirs of the body, of the said Queen, without failing to the Princess Ann of Denmark, and the heirs of her body; without, also failing to the heirs of the body of the said William, King of England.

AND they do pray, the said King and Queen of England, to accept the same accordingly.

THE Articles of Greivances represented by the Estates of the Kingdom of SCOTLAND, to the KING's most excellent Majesty, to be Redressed in Parliament, whereof the tenor follows :

*April 13th 1689.*

THE Estates of the Kingdom of Scotland do represent, that the Committee of Parliament called the Articles, is a great greivance to the Nation, and that there ought to be no committees of Parliament; but such as are freely chosen by the States, to prepare motions and overtures, which are first made in the house.

THAT the first act of Parliament, 1669, is inconsistent with the establishment of the church government, now desired, and ought to be abrogated.

THAT the Forefaulters, in prejudice of Vassals, creditors, and heirs, entail are a great greivance.

THAT the obliging the Leidges to depone upon the crimes, against delinquents, otherwise, than when they are reduced in the special processe, as witnesses is a great greivance.

THAT the affizes of error, are a greivance; and that Juries be considered by Parliament.

THAT the eighteenth act of Parliament, in 1681, declaring a cumulative jurisdiction, is a greivance.

THAT the Commisseroit Courts, as they are now constitute, are a greivance.

THAT the twenty seventh act of Parliament, in 1663, giving to the King, power to impose customs at pleasure, upon Foreign import and trade, is a



greivance; and prejudicial to the trade of the Nation.

THAT the marriage of a King or Queen of this Realm, to a Papist, is dangerous, the Protestant religion, and ought to be provided against,

THAT the levying or keeping on foot, a standing army in time of peace, without consent of Parliament, is a greivance.

THAT all greivances relating to the manner and measure of the Leidges, their representation in Parliament be considered, and redressed in the first Parliament:

THAT the grievances in the Burrows, be considered and redressed in the Parliament.



- F I N I S -

## AN ACT

*For the better securing the Liberty of the Subject,  
and for prevention of Imprisonment beyond Seas,*

COMMONLY CALLED

### THE HABEAS CORPUS ACT.

**W**HEREAS great delays have been used by Sheriffs, Goalers, and other officers to whose custody any of the King's subjects have been committed for Criminal, or supposed Criminal matters, in making returns of writs of *Habeas Corpus* to them directed, by standing out an *Alias*, and *Pluries*, *Habeas Corpus*, and sometimes more, and by other shifts, to avoid their yielding obedience to such writs, contrary to their duty, and the known Laws of the land, whereby many of the King's Subjects have been, and hereafter may be long detained in Prison, in such cases where by law they are Bailable, to their great charges and vexation.

II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal, or supposed criminal matters (2.) Be it enacted by the Kings Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority thereof, That whensoever any person or persons shall bring any *Habeas Corpus* directed unto any Sheriff or Sheriffs, Goaler, Minister, or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the Goal or Prison with any of the under-Officers, under-Keepers, or Deputy of the said Officers or Keepers, that the said Officer or Officers, his or their under-Officers, or Keepers, or Deputies, shall within three days after the service thereof, as aforesaid (unless the commitment aforesaid were for Trea-



son or Felony, plainly and specially expressed in the warrant of commitment) upon payment, or tender of the charges of bringing the said prisoner, to be ascertained by the Judge or Court that awarded the same, and endorsed upon the said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the Court or Judge, to which he shall be brought, according to the true intent of this present Act, and that he will not make any escape by the way, make return of such writ. (3.) And bring or cause to be brought the body of the party so committed or restrained, unto, or before, the Lord Chancellor, or Lord Keeper of the Great Seal of England, for the time being, or the Judges or Barons of the said Court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof: (4.) And shall then likewise certify the true causes of his detainer, or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places, where such Court or person is or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, than within the space of twenty days after such the delivery aforesaid and not longer.

III. And to the intent that no Sheriff, Goaler, or other officer may pretend ignorance of the import of any such writ, (2.) Be it Enacted by the authority aforesaid, That all such writs shall be marked in this manner, *Per statutum tricemo primo Caroli Secundi Regis*, and shall be signed by the person that awards the same, (3.) And if any person or persons shall be, or stand committed or detained as aforesaid, for any crime, unless for Felony or Treason, plainly expressed in the warrant of commitment, in the vacation time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained, (other than persons convicted, or in execution,) by legal process, or any one on his or their behalf to appeal, or complain to the Lord Chancellor, or Lord Keeper, or any one of his Majesties Justices, either of the one Bench, or of the other, of the Barons of the Exchequer of the degree of *heCoif*. (3.) And the said Lord Chancellor, Lord Keeper,

Justices, or Barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made, that such copy or copies, were denied to be given by such person or persons, or any on his, her, or their behalf, attested and subscribed by two witnesses, who were present at the delivery of the same, to award and grant an *Habeas Corpus* under the Seal of such Court, whereof he shall then be one of the Judges. (5) To be directed to the officer or officers in whose custody the party so committed or detained, shall be returnable immediately before the said Lord Chancellor or Lord Keeper, or such Justice, Baron, or any other Justice or Baron of the degree of the Coif of any of the said Courts. (6.) And upon service thereof as aforesaid, the officer or officers, his or their under Officer or under Officers, under-keeper or under-keepers, or deputy to whose custody the party is so committed or detained, shall within the times respectively before limited, bring such prisoner or prisoners, before the said Lord Chancellor or Lord Keeper, or such Justices, Barons, or one of them, before whom the said writ is made returnable, and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment, and detainer. (7.) And thereupon within two days after the party shall be brought before them, the said Lord Chancellor or Lord Keeper, or such Justice or Baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties in any sum, according to their discretion, having regard to the quality of the prisoner, and nature of the offence, for his or their appearance in the Court of Kings Bench the term following, or at the next Assizes, Sessions, or General Goal delivery of and for such County, City, or Place, where the commitment was, or where the offence was committed, or in such other Court where the said offence is properly recognizable, as the case shall require, and then shall certify the said writ, with the return thereof, and the said recognizance or recognizances, into the said Court, where such appearance is to be made. (6.) Unless it shall appear, unto the said Lord Chancellor, or Lord Keeper, or Justice



or Justices, Baron or Barons, that the party so committed is detained upon a legal process, order, or warrant, out of some Court that hath jurisdiction of Criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such matters or offences for the which by the Law the prisoner is not bailable.

IV. Provided always, and be it Enacted, That if any person shall have wilfully neglected by the space of two whole terms after his imprisonment, to pray a *Habeas Corpus* for his enlargement, such person so wilfully neglecting, shall not have any *Habeas Corpus* to be granted in vacation time in pursuance of this Act.

V. Be it further Enacted by the authority aforesaid, That if any officer or officers, his or their under-officer, under-officers, under-keeper, or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner, or person in his behalf; shall refuse to deliver, or within the space of six hours after demand, shall not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he or they are hereby required to deliver accordingly, all and every the head gaolers and keepers of such Prisons, and such other person, in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved, the sum of one hundred pounds; (2.) And for the second offence, the sum of two hundred pounds, and shall and is hereby made incapable to hold or execute his said office; (3.) the said penalties to be recovered by the prisoner or party grieved, his executors or administrators, against such offenders, his executors or administrators, by any action of debt, suit, bill, plaint or information, in any of the King's Courts at *Westminster* wherein no essoin, protection, privilege, injunction, wager of law, or stay of prosecution by *Non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any more than one imparlance; (4.) And any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after

recovery or judgment at the suit of a party grieved, for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

6. And for the prevention of unjust vexation by reiterated commitments for the same; (2.) Be it enacted by the authority aforesaid, That no person or persons which shall be delivered or set at large upon any *Habeas Corpus* shall at any time hereafter be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order, and process of such Court wherein he or they shall be bound by recognizance to appear, or other Court having Jurisdiction of the cause; (3.) And if any other person or persons shall knowingly contrary to this act recommit, or imprison, or knowingly procure or cause to be recommitted or imprisoned for the same offence, or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, the sum of five hundred pounds, any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

7. Provided always, and be it further enacted, That if any person or persons shall be committed for High Treason or Felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court the first week of the term, or first day of the Sessions of *Oyer and Terminer*, or general Gaol delivery, to be brought to his trial, shall not be indicted sometime in the next term, Sessions of *Oyer and Terminer*, or general Gaol delivery after such commitment, it shall and may be lawful to and for the Judges of the Court of Kings bench, and Justices of *Oyer and Terminer*, or general Gaol delivery, and they are hereby required upon motion to them made in open Court the last day of the Term, Sessions, or Gaol delivery, either by the prisoner, or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the Judges and Justices upon oath made, that the witnesses for the King could not be produced the same Term, Sessions or general Gaol delivery; (2.) And if any person or persons committed as aforesaid, upon his



prayer or petition in open Court, the first week of the Term, or first day of the Sessions of *Oyer and Terminer*, and general Gaol delivery, to be brought to his trial, shall not be indicted and tried the second Term, Sessions of *Oyer and Terminer*, or general Gaol delivery after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

8. Provided always, That nothing in this Act shall extend to discharge out of prison any person charged in debt or other action, or with process in any Civil Cause, but that after he shall be discharged of his imprisonment for such his Criminal Offence, he shall be kept in custody according to Law, for such other suit.

9. Provided always, and be it enacted by the authority aforesaid, That if any person or persons, subjects of this Realm, shall be committed to any Prison, or in Custody of any officer or officers whatsoever, for any Criminal, or supposed Criminal Matter, That the said person shall not be removed from the said Prison and custody, into the custody of any other officer or officers, (2.) Unless it be by *Habeas Corpus*, or some other legal writ; or where the prisoner is delivered to the Constable or other inferior officer, to carry such prisoner to some common Gaol; (3.) or where any person is sent by order of any Judge of Assize, or Justice of the Peace, to any common work-house or house of correction; (4.) or where the prisoner is removed from one prison or place to another within the same County, in order to his or her trial or discharge in due course of law; (5.) or in case of sudden fire or infection, or other necessity; (6.) and if any person or persons shall after such commitment aforesaid, make out and sign, or countersign any warrant or warrants for such removal aforesaid, contrary to this Act, as well he that makes or signs or countersigns such warrant or warrants as the officer or officers that obey or execute the same, shall suffer, and incur the pains and forfeitures in this Act before-mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.

10. Provided also, and be it further Enacted by the Authority aforesaid, That it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and

obtain his or their *Habeas Corpus*, as well out of the High Court of Chancery, or Court of Exchequer, as out of the Courts of Kings Bench, or Common Pleas, or either of them; (2.) And if the said Lord Chancellor, or Lord Keeper, or any Judge or Judges, Baron or Barons for the time being, of the degree of the *Coif* of any of the Courts aforesaid in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made, that such copy or copies were denied as aforesaid, shall deny any writ of *Habeas Corpus* by this Act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved, the sum of five hundred pounds, to be recovered in manner aforesaid.

11. And be it Enacted, and declared by the Authority aforesaid, That an *Habeas Corpus* according to the true intent and meaning of this Act, may be directed, and run into any Country *Palatine*, the Cinque ports, or other privileged places within the Kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, and the isles of *Jersey* or *Guernsey*; any law or usage to the contrary notwithstanding.

12. And for preventing *illegal* imprisonments in Prisons beyond seas. (2.) Be it further Enacted by the authority aforesaid, That no subject of this Realm that now is, or hereafter shall be an inhabitant or resident of this Kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, shall or may be sent prisoner into *Scotland*, *Ireland*, *Jersey*, *Guernsey*, *Tangier*, or into any parts, garrisons, islands, or places beyond the seas, which are, or at any time hereafter, shall be within or without the dominions of his Majesty, his Heirs or Successors. (3.) And that every such imprisonment is hereby Enacted and adjudged to be *illegal*; (4.) and that, if any of the said subjects now is, or hereafter shall be so imprisoned, every such person and persons so imprisoned, shall and may for every such imprisonment, maintain by virtue of this Act, an action or actions of false imprisonment, in any of his Majesties Court of Record, against the person or persons by whom he or she shall be so committed, detained; imprisoned, sent prisoner, or transported contrary to the true meaning of this Act, and against all or any person or



persons that shall frame, contrive, write, seal, or counter-sign any warrant or writing for such commitment, detainer, imprisonment, or transportation, or shall be advising, aiding or, assisting in the same, or any of them; (5.) And the plaintiff in every such action shall have judgment to recover his treble costs, besides damages, which damages, so to be given, shall not be less than five hundred pounds; (6.) in which action no delay, stay or stop of proceeding, by rule, order or command, nor no injunction, protection, or privilege whatsoever, nor any more than one imparlance shall be allowed, excepting such rule of the Court wherein the action shall depend, made in open Court, as shall be thought in Justice necessary, for special cause to be expressed in the said rule; (7.) And the person or persons who shall knowingly frame, contrive, write, seal, or counter-sign any warrant for such commitment, detainer, or transportation, or shall so commit, detain, imprison, or transport any person or persons contrary to this Act, or be in any ways advising, aiding, or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, or any of the islands, territories or dominions thereunto belonging. (8.) And shall incur and sustain the pains, penalties and forfeitures limited, ordained, and provided in and by the statute of provision and premunire, made in the sixteenth year of King *Richard the second*. (9.) And be incapable of any pardon from the King his heirs or successors, of the said forfeitures, losses or disabilities, or either of them.

13. Provided always, That nothing in this Act extend to give benefit to any person who shall by contract in writing agree with any merchant, or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract.

14. Provided always, and be it Enacted, That if any person or persons lawfully convicted of any felony, shall in open Court pray to be transported beyond the seas, and the Court shall think fit to leave him or them in prison, for that purpose, such person or persons may be tran-

sported into any parts beyond the seas: This Act, or any thing therein contained to the contrary notwithstanding.

15. Provided also, and be it Enacted, That nothing herein contained, shall be deemed, construed, or taken to extend to the imprisonment of any person before the first day of *June*, one thousand six hundred seventy and nine, or to any thing advised, procured or otherwise done, relating to such imprisonment; any thing herein contained to the contrary notwithstanding.

16. Provided also, that if any person or persons at any time resident in this realm, shall have committed any capital offence in *Scotland* or *Ireland*, or any of the Islands, or foreign plantations of the King his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place there to receive such trial, in such manner as the same might have been used before the making of this Act; any thing herein contained to the contrary notwithstanding.

17. Provided always, and be it Enacted, That no person or persons shall be sued, impleaded, molested, or troubled for any offence against this Act, unless the party offending be sued or impleaded for the same within two years at the most after such time wherein the offence shall be committed, in case the party grieved shall not be then in Prison, and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his, or her delivery out of Prison, which shall first happen.

18. And to the intent no person may avoid his trial at the Assizes, or general Goal delivery, by procuring his removal before the Assizes at such time as he cannot be brought back to receive his trial there; (2.) Be it Enacted, That after the Assizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common Gaol upon any *Habeas Corpus* granted in pursuance of this Act, but upon any such *Habeas Corpus*, shall be brought before the Judge of Assize in open Court, who is thereupon to do what to justice shall appertain.



19. Provided nevertheless, That after the Assizes are ended, any person or persons detained may have his or her *Habeas Corpus* according to the direction and intention of this Act.

20. And be it also Enacted by the authority aforesaid, That if any information, suit, or action, shall be brought or exhibited against any person or persons for any offence committed, or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they own nothing, and to give such special matter in evidence to the Jury that shall try the same, which matter being pleaded, had been good and sufficient in law to have discharged the said defendant or defendants against the said information, suit or action, and the said matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alledged the same matter in bar or discharge of such information, suit, or action.

21. And because many times persons charged with petty Treason or Felony, or as accessories thereunto, are committed upon suspicion only, whereupon they are bailable or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the Justices of Peace that committed the persons, and have the examinations before them, or to other Justices of the Peace in the county : (2.) Be it therefore Enacted, That where any person shall appear to be committed by any Judge, or Justice of the Peace, and charged as accessory before the fact, to any petty Treason or Felony, or upon suspicion thereof, or with suspicion of petty Treason or Felony, which petty Treason or Felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this Act, or in any other manner than they might have been before the making of this Act.

## THE COMMENT.

**T**HERE are three things, which the Law of England, (which is a law of mercy) principally regards and taketh care of, viz. Life, Liberty and Estate. Next to a man's life, the nearest thing that concerns him, is freedom of his person, for indeed what is imprisonment, but a kind of Civil Death? Therefore saith Fortescue, cap. 42. *Anglia Jura in omni Casu Libertari dant favorem.* The laws of England do in ALL CASES favour Liberty.

Touching Commitments, and what is required to make a Legal Mittimus.

The writ of *Habeas Corpus* is a remedy given by the common law for such as were unjustly detained in custody, to procure their liberty: But before, this statute was rendered far less useful than it ought to be, partly by the Judges pretending a power to grant, or deny the said writ at their pleasure, in many cases, and especially by the ill practises of Sheriffs and Goalers, by putting the prisoner to the charge and trouble of an *alias* and *pluries* (that is a second and third writ, before they would obey the first, for there was no penalty till the third,) and then at last the Judges would oft-times alledge, That they could not take Bail, because the party was a *prisoner of State*, &c. Therefore to remedy all those mischiefs, this most whollome Law was provided. Which we shall briefly endeavour to divide into its severall branches, and explain it to the meanest capacities, since no man is sure but one time or other, he may have occasion to make use of it.

This Act concerneth either, first, persons committed for some other criminal or supposed criminal matter, besides Treason or Felony, and these are to have an *Habeas Corpus* immediately; 2dly, Such who in their Mittimus are charged with Treason or Felony, and these shall have the benefit of the said writ, after the time herein limited. 1st. If any Goaler or Under-keeper shall not deliver a *true Copy of the Mittimus* within 6 hours after the prisoner demands it, the head Goaler or Keeper forfeits to the prisoner for the first offence 100*l.* for the second offence 200*l.* and loses his place. Nor is there any Fee to be paid for the same, the Turnkey must deliver it at his peril. And note, if the prisoner should be locked up, or none suffered



to come at him, any friend of his may demand the same on his behalf.

2. Whatever the criminal matter be, if Treason or Felony be not expressly charged, any person on the prisoner's behalf, carrying such true copy of the commitment to the Lord Chancellor, or any one of the Judges, or Barons of the Exchequer, or upon oath made that a copy was demanded and denied, he shall grant an *Habeas Corpus*, or forfeit 500*l.* to the prisoner; but note, the request must be made to such Judge in writing, and attested by two witnesses,

3. If the Sheriff or Goaler do not carry up the prisoner and return the true causes of his detainour, within three days, if under twenty miles distance, or within ten days if above twenty and under an hundred miles; or within twenty days if above an hundred miles, he forfeits 500*l.* to the prisoner.

Note, the prisoner must pay the charges of his carrying up, and the Judge when he grants the writ, may order how much, but it must not be above 12*d.* a mile.

If upon return of such *Habeas Corpus*, it appear the prisoner is not charged with Treason or Felony, specially and plainly expressed, or for such matters, as by law are notailable, the Judge shall discharge the prisoner upon Bail.

4. If a person once so Bailed out, shall again be imprisoned for the same offence, those that do it forfeit 500*l.*

5. If there be High Treason or Felony plainly and specially expressed (That is, not only generally, for Treason or Felony, but Treason in conspiring to kill the King, or in Counterfeiting the King's Coin, or Felony, for Stealing the goods of such an one to such a value, &c.) Then the prisoner cannot have his *Habeas Corpus*, till first he has on the first week of the Term, or first day of Sessions of Oyer and Terminer, or General Goal-delivery petitioned in open Court to be brought to his Trial; and then if he be not brought to Trial the next Term, or Sessions following, on the last day thereof, he shall be Bailed; and if not indicted the second Term or Sessions, shall be discharged.

6. This act extends to all places within England and Wales, the Tower cannot be supposed to be exempted,

nor *Windſor Caſtle*, nor any ſuch Royal Forts, for the words are general; And beſides, there is a ſpecial Act of Parliament, that unites the King's Caſtles to the Counties wherein they ſtand; there having been it ſeems ſome pretenſions and ill practices to hold them diſtinct, that therein they might detain men priſoners againſt Law, and not admit any *Writ* to enlarge them. For Remedy whereof it was thus Enacted;

*Anno 13. Rich. Secundi.*

Item. *It is Ordained and Affented, That the King's Caſtles and Goals which were wont to be Joyned to the Bodies of the Counties, and be now Severed, ſhall be Rejoyned to the ſame Counties.*

Laſtly, No perſon ſhall be ſent Priſoner out of *England* or *Wales*, into *Scotland*, *Ireland*, *Jerſey*, *Guernſey*, *Tangier*, or any other place beyond the Seas.

The Proviſo's and other clauſes of this Act may be eaſily apprehended by the meanest capacities.

AND, As the Law provides thus for our *Liberty*; ſo it takes care, that thoſe that *are in Cuſtody*, ſhall not be abuſed or oppreſſed; to which purpoſe I ſhall here inſert ſo much as is material and neceſſary to be known by all perſons, who are ſo unhappy as to be priſoners, out of the Statute of the 22d. and 23d. *Car. 2. Cap. 20.* The words whereof are as follows:

WHEREAS Perſons that are under Arreſts, or committed to the cuſtody of Sheriffs, Bailiffs, Gaolers, Keepers of Priſons, or Gaols, are much abuſed and wronged by extorting of great Fees, Rewards, and other exactions, and put to great Expences under pretences of favour, or otherwiſe, whereby they are greatly Oppreſſed, and many times Ruined in their Eſtates. (2.) For Remedy thereof. Be it Enacted by the Authority aforeſaid, That if any Under-Sheriff, Bailiff, Serjeant at Mace, or other Officer or Miniſter whatſoever, ſhall at any time or times hereafter have in his or their cuſtody, any



\* person or persons by vertue or colour of any writ,  
 \* process, or any other warrant whatsoever, it shall  
 \* not be lawful for such officer or officers, to convey or  
 \* carry, or cause to be conveyed or carried the said  
 \* person or persons to any tavern, ale-house, or other  
 \* publick victualling or drinking-house, without the  
 \* free and voluntary consent of the said person or per-  
 \* sons, so as to charge such prisoner with any sum of  
 \* money for any wine, beer, ale, victuals, tobacco, or  
 \* any other things whatsoever, but what the said per-  
 \* son or persons shall call for, of his, her, or their  
 \* own accord, (3.) And shall not demand, take or  
 \* receive, or cause to be demanded, taken or receiv-  
 \* ed, directly or indirectly, any other, or greater sum  
 \* or sums than what by Law ought to be taken or  
 \* demanded for such arrest, taking, or waiting (un-  
 \* til such person or persons shall have procured an  
 \* appearance, found bail, agreed with his or their  
 \* adversaries, or be sent to the proper Gaol belong-  
 \* ing to the County, City, Town or Place where such  
 \* arrest or taking shall be,) (4.) Nor take and ex-  
 \* act any other reward or gratuity for so keeping  
 \* the said person or persons out of the gaol or prison,  
 \* than what he, she or they shall or will of his, her  
 \* or their own accord, voluntarily and freely give.  
 \* (5.) Nor take, nor receive any other, or greater  
 \* sum or sums for each nights lodging, or other ex-  
 \* pences, than what is reasonable and fitting in such  
 \* cases, or shall be so adjudged by the next Justice of  
 \* the Peace, or at the next Quarter-Sessions. (6.)  
 \* And shall not cause or procure the said person or  
 \* persons, to pay for any other wine, beer, ale, vic-  
 \* tuals, tobacco, or other things, than what the said  
 \* person or persons shall voluntarily, freely, and par-  
 \* ticularly call for.

\* And that every Under-Sheriff, Gaoler, Keeper  
 \* of Prison or Gaol, and every person or persons  
 \* whatsoever, to whose custody any person or per-

sons shall be delivered or committed, by virtue of any writ of process, or any pretence whatsoever, shall permit and suffer the said person or persons, at his and their will and pleasure, to send for, and have any beer, ale, victuals and other necessary food, where, and from whence they please; and also to have and use such bedding, linnen, and other things, as the said person or persons shall think fit, without any purloining, detaining or paying for the same, or any part thereof; nor shall demand, take or receive of the said person or persons, any other, or greater fee or fees whatsoever, for his, her, or their commitment, release or discharge; or for his, her, or their chamber-rent, than what is allowable by Law, untill the same shall be settled by three Justices of the Peace, whereof one to be of the *Quorum*, of each particular County, City and Town Corporate, in their several precincts; and for the City of *London*, and Counties of *Meddlessex* and *Surrey*, the two Lord Chief Justices of the *King's-Bench* and *Common-Pleas*, and the Lord Chief Baron, or any two of them, and the Justices of the Peace of the same, in their several Jurisdictions.

And likewise that the said Lord Chief Justice, Lord Chief Baron, and Justices of the Peace in their several Jurisdictions, and all Commissioners for Charitable uses, do their best Endeavours, and Diligence to Examine, and find out the several Legacies, Gifts and Bequests bestowed and given for the Benefit and Advantage of the Poor Prisoners for Debt, in the several Gaols and Prisons in this Kingdom, and to send for any Deeds, Wills, Writings, and Books of accompts whatsoever; and any person or persons concerned therein, and to Examine them upon Oath, to make true discovery thereof (which they have full Power and Authority hereby to do) and the same so found out ascertained, to order and settle in some manner and way, that the



Prisoners hereafter may not be defrauded, but Receive the full benefit thereof, according to the true intent of the Donors.

And that these Accounts of the several Legacies, Gifts and Bequests, given and bestowed upon the several Prisoners for Debt, within this kingdom, and the several Rates of Fees, and the future Government of Prisons, be signed and confirmed by the Lord Chief Justice, and Lord Chief Baron, or any two of them for the time being, and the Justices of the Peace in *London, Middlesex and Surrey*; and by the Judges for the several Circuits, and Justices of the Peace for the time being, in their several Precincts, and fairly written and hung up in a Table in every Gaol and Prison, before the first day of *November, 1671*, and likewise be Registrated by each, and every Clerk of the Peace within his or their particular Jurisdiction: And after such Establishment no other or greater Fee or Fees than shall be so established, shall be Demanded or Received.

And whereas it is become the common practice of Gaolers and Keepers of *Newgate, the Gate-house at Westminster*, and sundry other Goals and prisons, to Lodge together in one Room, or Chamber and Bed, Prisoners for Debt, and Felons, wherby many times honest Gentlemen, Trades-men and others, Prisoners for Debt, are disturbed and hindered in the night-time from their natural rest, by reason of their Fetters and Irons, and otherwise much offended and troubled by their lewd and prophane Language and Discourses, with most horrid Cursing and Swearing (much accustomed to such persons;) (1.) Be it Enacted by the Authority aforesaid, That it shall not be lawful hereafter for any Sheriff, Goaler, or Keeper of any Goal or Prison, to put, keep or Lodge Prisoners for Debt, and Felons together in one Room or Chamber; but that they shall be put, kept, and Lodged separate and apart

\* one from another, in distinct Rooms, (3.) Upon pain  
 \* that he, she or they which shall offend against this  
 \* Act, or the true Intent and meaning thereof, or any  
 \* part thereof, shall forfeit and lose his or her Office,  
 \* Place or Employment, and shall forfeit treble dam-  
 \* ages to the party grieved, to be Recovered by vertue  
 \* of this Act, any Law, Statute, Usage or Custom to  
 \* the contrary in any wise notwithstanding.

And to the End that English-men may more en-  
 tirely enjoy there due Freedoms, the prudence of our  
 Legislators have thought fit from time to time to  
 remove encroachments thereupon, though under  
 pretence of Jurisdictions and Courts of Justice; and  
 to prohibit any exorbitant Arbitrary Power for the  
 future, but that all things may be left to the calm  
 and equal proceedings of Law; and that most excel-  
 lent Method of Trial by *Juries*, one of the principal  
 Bulwarks of *England's* Liberties, For an Instance  
 hereof, take the Act following:

FINIS.





